Public Utilities
FORTNIGHTLY

VOL. XIII; No. 8 APRIL 12, 1934

The Man Who Does the Best

Gets more kicks than all the rest by the man who does the worst

BY HENRY C. SPURR

"I've allus noticed grate success
Is mixed with troubles, more or less,
And it's the man who does the best
That gits more kicks than all the rest."
JAMES WHITCOMB RILEY

PUBLIC utility men can perhaps get a little consolation from the poet's philosophy. It is usually the man who does the best who gets most of the kicks, and the man who does the worst who does most of the kicking.

Public utility service, created by private initiative, and carried on by men with imagination and courage as a private enterprise, has achieved a remarkable success. The service in this country is the best in the world. It is an outstanding accomplishment.

It would be hard to find a business which has created more wealth for the people, added more to their comfort, and taken less from them in doing so. Yet no business has had to stand quite as many kicks.

And who are doing the kicking?

Why, as usual, the men who themselves, do, not the best, but the worst. The kicking is mostly done by a few political leaders least familiar with economic problems, usually by politicians whose extravagance, mismanagement, and interference with normal human activities have imposed a crushing burden of debt and taxation upon the people.

THESE men, the real exploiters, are the ringleaders of attacks on an industry which, instead of impoverishing the people, has constantly enriched them. Recently an advertisement was drawn up for a utility company. It reads:

> Our value to the community can be judged in part by the contribution made to the general welfare. It is measured in terms of employment, of purchases, taxes, the taking part in public affairs, and the promotion of community development.
>
> We are organized to give necessary public service in thirty-three counties in central and northern West Virginia, one of the richest industrial and manufacturing areas in the country.
>
> We give work to about 1,400 people, the great majority of whom are native born. We pay them every year more than $2,000,000. Last year we paid to West Virginians more than a million dollars for materials, rents, and other purchases. We paid more than $700,000 in taxes for the support of our government and its institutions. We paid $230,000 in preferred stock dividends to more than 3,000 citizens of the state.
>
> We are sure that West Virginians have no intention to destroy a tree so fruitful.

That, it would seem, is worth thinking about.

One of the anomalies of the attitude of the antiutility political leaders is that they seek to attack or crush an industry upon which they rely very largely for their own support. Expanding expenses of the Federal, state, and local governments require the taking of more and more money from the pockets of the taxpayers. The utilities—especially the electrical utility—have become a favorite source from which this tax money can be extracted.

One would naturally think that ordinary self-interest would lead these political leaders who live by taxation to treat this easy source of revenue with some consideration, rather than to attempt to destroy it by hostile attacks and legislation. Constantly forcing rates down and taxes up cannot go on forever. If nobody is allowed to earn any money there will soon be nobody to tax. Killing the goose that lays the golden tax egg, however, seems to be a popular political pastime. That, however, is another story.

The utility political controversy centers almost wholly about rates. Some efforts have been made on behalf of holding company investors but that is a minor sector of the attack. The major kicks given even to the holding companies have been on behalf of customers of operating companies who are alleged to be overcharged through the evil policies of the holding companies. So, for all practical purposes, the drive against the utilities may be said to have but one real objective. That objective is low rates.

From the political standpoint, the effect on the stockholders of utility companies of these political maneuvers appears to be immaterial.

THERE is a group of political leaders, not large but very active, who are against the utilities on general principles. They are for lower utility rates and higher utility taxes at all times whether the general price level is high or low. Their demands on behalf of utility customers are often very interesting.

During the period of high war prices when the cost of coal was at its peak a certain gas company in New Hampshire wanted to increase its rates sufficiently to take care of the added cost of gas-making coal. The mayor of the city where the company

operated came posthaste to the capital to protest to the public service commission.

"Why," said the mayor, "this is the very time when gas rates should be reduced."

"Why do you say that?" asked one of the commissioners. "It costs the company more to produce the gas doesn't it?"

"Well," replied the mayor, "you see the price of coal is now so high the common people cannot afford to buy it."

"I don't quite get your point," said the commissioner very much puzzled.

"The point is this," continued the mayor. "If the common people can't afford to buy coal, the gas company ought to cut rates so that the people can burn gas."

There has been plenty of that sort of reasoning since the depression began in favor of cutting utility rates. Some of the governors of our states have taken a very active part in it.

LAST year Governor Talmadge fired the old Georgia commission. According to the newspapers he is reported to have said on one occasion:

> Before the new public service commission went into office after I put the old crowd out, I talked to them and they agreed with me that utility rates are too high and, listen to this, I am expecting some material reductions in a few days. When those reductions are made I want you to watch the judges who grant injunctions and beat the sand out of them if they stop these reductions.

The sentiment of these political leaders, the New Hampshire mayor and the Georgia governor, remind one of the famous letter received by the Board of Trade of Burleigh, England, in 1890, on the subject of transportation rates. It ran as follows:

> What we shippers want is to have our fish carried at half the present rate. We don't care a damn whether it pays the railways or not.

Much of the extreme low rate agitation is of precisely that type. Demands have been made for arbitrary rate reductions running all the way from 20 to 50 per cent without regard to the effect on company revenue.

If the stockholders don't like it, there is always the threat of government ownership.

Singularly enough, the kicking throughout the country seems to have been most vigorous where state regulatory commissions have been most active in bringing about rate reductions. Perhaps this is because our aggressive antiutility political leaders have in the commissions one more body to attack. They can kick the commissions as well as the utilities. Anyway, whatever the explanation, commission activities on behalf of utility customers have not lessened low-rate agitations.

TAKE California. California has for many years had a very active and able commission. It could never fairly be said to have been utility-minded any more than this could honestly be said of any other com-

¶ *"THERE is a group of political leaders, not large but very active, who are against the utilities on general principles. They are for lower utility rates and higher utility taxes at all times whether the general price level is high or low."*

mission for that matter. Many utility stockholders have considered the present California commission quite radical.

Nevertheless, the California commission has had plenty of rate troubles.

Early last year the commission received a letter in which it was stated that the utility companies were charging the same prices they did at the peak of prosperity. This is one of the many untruths about the utilities which have been circulated in various parts of the country during the depression.

In reply to it, Clyde L. Seavey, president of the commission, issued a statement in which he said that the public utilities of California, since the fiscal year 1928–1929, had made rate reductions which totaled more than "$19,642,000." He said that reductions to the extent of $16,132,722 had come as the result of commission action while voluntary reductions totaled $3,509,735.

This statement was made early in the year. Several voluntary rate reductions have been made since that time totaling several millions of dollars.

NEVERTHELESS, there was a movement to have the California senate investigate the activities of the commission. A bill was also introduced in the assembly to compel an immediate 20 per cent reduction in all public utility gas and electric charges, although Commissioner Seavey had stated that many of the utilities were making on the present basis of rates little more than the cost of their money.

NEW YORK was one of the earliest states to establish modern public service commissions. The New York commissions, notwithstanding political interference, have, for the most part, been composed of able, public-spirited commissioners. The present commission is no exception to the rule. Utility stockholders look upon it as radical.

New York state has, during the last few years, had its full share of utility rate reductions. Some of these have come as voluntary offerings by the companies; some as the result of litigation; but latterly the greater part as the result of negotiations on the initiative of the commission.

Through reductions in electric rates alone, which were put into effect in 1931, 1932, and 1933, consumers of the state are now saving about $15,000,000 a year.

That is the customers' side of the story. Looking at the picture from the utility standpoint, the stockholders, as a result of these reductions, are losing about $15,000,000 a year.

Reductions made from December 1, 1932, to November 30, 1933, equalled about $3,000,000, according to estimates made at the time the reduced rates were filed. In many cases, however, these estimates have been exceeded by actual reductions which resulted from the filed schedules as shown by actual experience under the lower rates. The New York Power & Light Corporation, for example, filed reductions in its commercial rates which were estimated to save consumers $170,000 annually. But as a result of a year's experience under the new rate it was found that the

Killing the Goose That Lays the Golden Tax Egg

"ONE of the anomalies of the attitude of the antiutility political leaders is that they seek to attack or crush an industry upon which they rely very largely for their own support. Expanding expenses of the Federal, . . . governments require the taking of more and more money from the pockets of the taxpayers. The utilities—especially the electrical utility—have become a favorite source from which this tax money can be extracted."

actual reduction amounted to over $200,000 annually. The total of $3,000,000 in saving mentioned is based, as stated, on estimates made at the time the rates were filed rather than on the actual experience under the new rates.

THE total of $3,000,000 does not include temporary emergency rates. These rates which the electric companies in New York city were ordered to make are estimated to save the consumers $8,800,000 a year. During the last year reductions totaling $2,970,435 were actually made and put into effect. Of this amount $121,059 represented reductions made voluntarily by the companies. The remainder, amounting to $2,849,376 represents the savings which resulted from negotiations instituted by the commission. This does not include any rate changes since November.

In addition to reductions made during the last year new rates were put into effect in 1932 which saved consumers $1,884,200. Practically all of this amount resulted from negotiations instituted by the commission. This result was, of course, accomplished without expensive litigation.

To this should be added reductions made in 1931 totaling $7,405,000 which were also made as the result of negotiation.

Of the total reductions made in 1931, $5,500,000 represents reductions made by electric companies in New York city and is the amount of estimated saving made at the time the rates were filed. The first year's experience under these lower rates in New York city, however, showed the reduction actually totaled $8,200,000. So that the reductions put into effect

in 1931 saved consumers more than $10,000 annually.

THESE figures show, as already stated, that as a result of reductions obtained during these years, consumers are now saving approximately $15,000,000,000 a year.

Nevertheless, statements are frequently made in New York that there have been no reductions in utility rates during the depression and rate complaint agitation in New York state has been very general covering practically every community in the state.

New York state has been one of the commonwealths in which the commission regarded as radical by stockholders, has itself come in for a lot of criticism by political leaders and professional low-rate agitators.

During the period when these extensive rate reductions were taking place a legislative investigation of gas and electric rates was called for. The dismissal of the chairman of the commission was demanded. Political leaders in New York city made an open plea for popularity based upon attacks on utility rates, a very common practice at present.

Speaking before the American Newspapers Publishers Association in New York city urging a national campaign against high public utility rates and high taxes, one of the newspaper men said that the cost of commodities had come down but that taxes and public utilities have not decreased in cost.

It is apparent that if he was right about taxes he was not right about public utility rates; and he might have been reminded that a fall in commodity prices had not produced a like decrease in the price of newspapers.

LET'S take another state for some specific figures as to rate reductions. Jumping from New York to New Jersey we find that in the latter state there were no reductions made by the commission as the result of rate litigation in 1932 and up to November, 1933. The reason for this undoubtedly was that the commission had, since 1924, adopted a policy of bringing about rate adjustments by negotiation on its own initiative annually as soon as the studies of the annual reports of operation are completed.

But substantial reductions have been made as the result of negotiations and, therefore, without the expense of litigation. Within the last year the following rate reductions have been secured:

Public Service Elec. and Gas Co.	$1,755,400
Jersey Central Power & Light Co.	227,818
New Jersey Power & Light Co.	168,000
Rockland Electric Co.	27,200
Making a total of	$2,178,418

A VOLUNTARY reduction of rates without complaint or commission action was made by the Jersey Central Power & Light Company to the amount of $4,002. This came about as a result of simplification of rate schedules.

With respect to reductions accomplished by negotiation rather than litigation, attention might be called to the fact that the Public Service Electric and Gas Company have made rate adjustments annually since 1924. As a result of this procedure accumulated savings to January 1, 1933, amounted to approximately $46,000,000.

In spite of the large rate reductions accomplished through negotiation, there was, during the last year, a tendency to kick about them and to return to formal rate litigation proceedings.

The general complaints received by letter to the commission from individuals grew substantially by comparison with the years prior to the depression. The general attitude appeared to be for rate adjustments. This can undoubtedly be attributed to some extent to economic conditions; but the public demand for rate reductions was greatly stimulated by political and other interests which have agitated the rate question.

What has gone on in California, New York, and New Jersey has been taking place to a considerable extent in many other states. Compared with previous years, the agitation for decreases in rates and the attacks upon public utility companies and state commissions have been much more extended, but they have by no means been universal. The savings to utility customers as the result of rate reductions through the country during the depression have run into many millions of dollars. The loss to utility stockholders has, of course, been correspondingly large.

Statements, therefore, that utility rates have not been reduced during the depression are untrue. The utilities have done well in the way of rate reductions. But, as everybody knows, they have been subjected to plenty of kicks.

And notwithstanding what has been done by the commissions for utility customers in the way of bringing rates down, the poet's philosophy as to the man who gets most of the kicks is well illustrated by the attitude of some of our political leaders toward commissions which have done the best.

Direct attacks have been made during the last year on the commissions, or members of commissions, in District of Columbia, Georgia, Illinois, Maryland, Michigan, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, and Tennessee. Indirect attacks on the commissions in the shape of suggested legislative investigation have also been made in California, Connecticut, and West Virginia. This list is accurate but probably incomplete.

The courts have also come in for their share of kicks, as the quoted statement of Georgia's militant low-rate governor shows.

And, of course, both the courts and the commissions are subjected to indirect kicks by the agitation for Federal, state, and municipal "yard-

¶ "Singularly *enough, the kicking throughout the country seems to have been most vigorous where state regulatory commissions have been most active in bringing about rate reductions. Perhaps this is because our aggressive anti-utility political leaders have in the commissions one more body to attack.*"

sticks." Agitation to extend municipal ownership of public utilities or for state development of power, or threats of municipal plant establishment if rates are not lowered, developed in at least twenty states and was probably largely encouraged by the Federal policy of power developments by the government.

This Federal policy is a disguised kick aimed at both the commissions and the courts.

There is, of course, some justification for the opinion that public utility rates, on general principles, should come down to some extent with the falling commodity prices. Lower prices might well be expected to cut the company's expenses and produce some decrease in the value of the rate base. Assuming no falling off in the use of the service, rates might be expected to come down. But that utility rates should be decreased to the same extent as the general commodity price level or in conformity to the value of the customer's dollar is quite fantastic.

IN the first place, when the commodity price level rose rapidly during the war and afterwards, the utility rate level did not follow. This is particularly true of rates for electric service, the utility at which the most violent kicks have been directed.

While commodity prices sky-rocketed between 1913 and 1920 so that wholesale commodity prices got to be two and a third times as high as they were and the cost of living was twice as high, the average price paid for electricity by the domestic consumer actually fell 15 per cent. In 1929 the cost of living was figured 71 per cent above that of 1913. The cost of domestic electric service, on the other hand, was 27 per cent below that year. In 1932 the cost of living declined but was still 32 per cent higher than the cost of domestic electric service, 36 per cent lower than it was in 1913. Electric rates could not be expected to fall to the same extent that general commodity rates did, because when the decline in prices started, electric rates, *being lower instead of higher than they were,* did not have so far to fall.

The false idea that utility rates should be reduced to the same extent as commodity prices is probably largely responsible for political demands that utility rates be cut arbitrarily from 20 to 50 per cent.

IF the commodity index yardstick is to be the determining measure of the reasonableness of public utility rates, why is it not just as proper to apply it to charges for other public service?

How about taxes, for example?

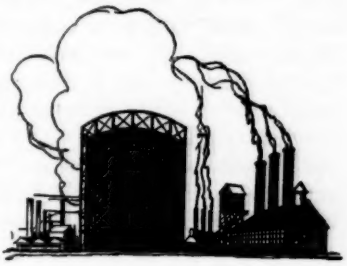
Why not make an arbitrary reduction in taxes based on the fall of commodity prices?

Everybody knows the answer. With enormously growing government expenses taxes cannot possibly come down if these expenses are to be met, no matter what the commodity price level or the value of the taxpayer's dollar is.

Let those who threaten government ownership, if utility rates do not come down to the same extent as commodity prices, ask themselves if rates for water supplied by municipal utilities have been reduced to the same extent as commodity prices.

Artificial Stimulation of Utility Rate Controversies

"MOST customers realize that they are getting more out of their utility service than they pay for—much more. They know well enough that in most instances it is no trouble whatsoever to order the service out if the customer thinks the price is too high. The consequence is that the demand for lower rates results largely from artificial stimulation by political leaders and professional trouble makers."



An amusing illustration of the anti-private utility and pro-municipal plant psychology is shown by what took place last year in one of our mid-West cities. It was announced that there could be no cut in the St. Paul municipal water plant rates. The reason given was that there were approximately $400,000 in bonds in the plant's $864,000 sinking fund which were of questionable value. At the same time there was a movement on foot in the same city for lower rates of privately owned utilities backed by a threat of municipal ownership unless the rates were reduced.

BUT, sticking strictly to water rates, it was reported during the year that Newark, New Jersey, would ask for a new deal from neighboring municipalities buying water from it. The mayor declared that he intended to boost the rate to these municipalities because he found it necessary to increase the rate to Newark consumers 15 per cent.

According to newspaper reports the president of the council of the city of Columbus, Ohio, in branding as a bluff the announcement of certain communities that they would build their own water supply system rather than to pay an increased rate to the city, announced that he would ask the council to consider how large an increase should be demanded.

These increases might, of course, well have been justified notwithstanding the fall in general commodity prices. A city like New York, for example, which, according to the mayor, is running an annual deficit from three to four million dollars on its water service, could hardly be expected to decrease its rates, as a sound business proposition, because of the fall in commodity prices. It could not justly be criticized even if it increased its rates for water service. The point made here is merely this: The reasonableness of utility rates, whether privately or publicly owned, cannot be measured solely, or even principally, by the general commodity index yardstick.

If not expected of municipal utilities, why of private utilities?

ACCORDING to the census report the rates of private utilities have been reduced 19 per cent since 1927. During the same period municipal plant rates were reduced only 14 per cent. If reasonableness of private company utility rates were to be determined by comparison with the commodity rate index, it would nevertheless seem quite hopeless for our antiprivate utility political leaders to turn to government utilities as a panacea for low rates.

If they applied their logic impartially, it would seem that they ought to be kicking the government plants instead of the private utilities. But logic has probably very little to do with it. As the poet says, it is usually the man who does the best "that gits more kicks than all the rest."

From the standpoint of the owner of the securities of private utility companies, the political rate and tax situation—the rain of kicks—probably seems pretty bad. It is bad enough. On the other hand, the rate agitation, while much more general than usual, is not as widespread as commonly supposed. The tax situation, while serious enough, is not as bad as it would be if the lead of the antiutility group were always followed.

Most customers realize that they are getting more out of their utility service than they pay for—much more. They know well enough that in most instances it is no trouble whatsoever to order the service out if the customer thinks the price is too high. The consequence is that the demand for lower rates results largely from artificial stimulation by political leaders and professional trouble makers.

Much that is attempted, however, never pans out.

THE probable explanation of failure to arouse real public interest is that the majority of customers probably know that the rates are usually low and they are willing that the companies receive a reasonable reward for good service, especially as the cost of this service is comparatively a small item of the family budget.

Utility security owners should remember that not all of our political leaders go along with the ultra antiutility group. Not all of the hostile bills are passed.

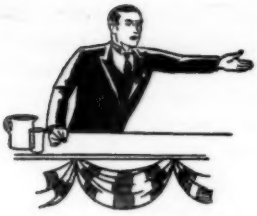
Still plenty of them are, and from the stockholders' standpoint the situation is serious enough, notwithstanding its redeeming features.

But if a public utility man, a public service commissioner, or a judge who has done well in the public service, is inclined to get a little sore over malignant and abusive criticism, let him remember that human nature is human nature.

"It's the man who does the best that gits more kicks than all the rest."

"IN Russia there is no private business. In Italy there is substantially no private business, all of it is folded into the Fascist 'corporate state.' In Germany the government is doing the same thing. In France, industry after industry is being taken over by the French government. It remains for us to see whether we can organize private business. I think we can."

—A. A. BERLE, JR.



Let's Have an End to the "Taxless Town"

PUBLICATION of the recent U. S. Census Bureau figures on electric rates which tended to show that the general average rate per kilowatt hour charged by private utilities is lower than that charged by municipal plants has resulted in various replies by the advocates of public ownership. The author of this article, nationally known for his efforts on behalf of publicly owned power plants, offers a most interesting explanation why some municipal power plant rates are higher than they should be. Irregular accounting and "taxless town" programs of overzealous local politicians receive the chief blame. The author also points out why in his opinion the privately owned plants are in no position to criticize their municipal rivals on the score of laxness of accounting practices.

By JUDSON KING

DIRECTOR, NATIONAL POPULAR GOVERNMENT LEAGUE

WRITERS in PUBLIC UTILITIES FORTNIGHTLY urge that an outstanding need of the whole electrical industry is a "standard yardstick" for accounting purposes. I am in agreement with them. We need one and a real one for public and private plants alike for application to those factors common to all. It would have many uses.

It would be valuable to the investor who with the aid of an accountant and a lawyer is trying to discover the true financial status of the power company in which he has invested his money; also to the intelligent taxpaying citizen who has sound ideas as to how his public plant should be financed and managed; and also to all persons who are striving to gauge the relative merits of public as opposed to private ownership and operation of power plants and systems.

WHILE it is true that a large percentage of our larger modern public plants have adequate accounting systems, like that of Los Angeles which incidentally is audited annually by the Price-Waterhouse people, it is also true that another large percentage of the 2,000-odd municipal plants still adhere to the sloppy municipal bookkeeping methods of the 80's and 90's.

Such need sharp revision.

They are inheritances from the old era of unbusinesslike city government against which the National Municipal League has led the struggle for a generation. The effort to establish the city manager plan, sponsored by this organization and backed by civic-

minded business men and citizens generally, is succeeding and conditions are improving to the advantage of all municipal departments—including utilities. Witness, for example, Cincinnati.

NOR can private companies, which seem rather fond of criticizing municipal accounting, assume perfection for themselves by pointing to the Uniform Classification of Accounts by which their accounting is supposed to be regulated. There are many defects in that venerable document which has been under suspicion both as to its contents and method of adoption ever since it was rejected as a model for the Federal Power Commission by Chief Accountant William V. King over ten years ago. It has recently been set aside by the public utilities commissions of Wisconsin and New York which have set up systems of their own.

Its provisions apply only to operating companies and do not touch the pyramid of holding companies above, the policies of which profoundly affect the underlying operating companies. So that there are, I should say, a large majority of both public and private plants that have defective and foggy accounting systems which employ confusing and conflicting methods.

Our yardstick experts, however, must take cognizance of the different objectives of public and private plants.

They are basically different, and while they have many things in common their chief aims are antithetical, the one being for welfare, the other for profit. Three yardsticks are necessary—one for public plants, one for private, and one for characteristics possessed by both. Even then they may have to add a foot rule or two.

IT will not be easy to devise such yardsticks or put them in practical operation. The new standards of honesty, accuracy, and clarity will be opposed by the 1890 type of municipal officials and by power executives who desire to keep their business secrets to themselves, ignoring the fact that they are conducting a *quasi* public rather than a private industry.

Take for example the difficulties we have had in getting a yardstick on the cost of distribution. The long silence imposed upon this subject was broken only by the action of the New York Power Authority in calling last January an Institute of Public Engineering to deal with it. A notable start was made by the more than 200 engineers attending, but promptly some representatives of the private interests began sidetracking the findings and method of inquiry. They are seeking to confuse the issue instead of continuing along the lines of sober scientific research which were laid down. It happened that strange variations in distribution costs appeared and that such costs in public plants turned out to be lower than in private plants. Presto, a yardstick in this field was proclaimed too difficult of construction to be of any value and men who have used "averages" *ad lib* for years among themselves and in educating the public suddenly discover "averages" to be very dangerous measuring rods.

IT is this sort of resistance to intelligent methods looking toward effective regulation as well as the contin-

ued defiant opposition to public operation after a community has legally expressed its will at the polls that is turning public opinion toward municipal ownership more than the work of all the public ownership propagandists combined.

Like it or not, we are in for a tremendous expansion of public power plants and superpower systems. It is a good time to consider what community power plants are for and the standards by which they should be operated. At this point I can hear some hard-headed citizen proclaim, with a thump of his fist on the table, "They should be run on a business basis."

He is everlastingly right, but prior to that dictum comes the question as to just what is the business of a public power plant as distinguished from a private plant.

UNQUESTIONABLY, the one is concerned with human welfare, the other with dividends. The prime purpose of a public plant is not to "make money" for the city or for anyone else. It is to furnish to the homes, farms, offices, stores, and factories as many hundreds or thousands of kilowatt hours per month as its respective customers can afford to pay for such services. Use, not profits, is the aim and especially a larger use by the middle and laboring classes.

To put it concretely, the prime purpose of a public plant is to keep the plant on a self-sustaining basis and give Mrs. Mary Smith all the current possible for the two or three dollars per month she can squeeze out of the family budget for electric service. This may sound sentimental, yet its purpose may be found stated in cold, legal language in the acts creating the New York Power Authority and the Tennessee Valley Authority, both signed by one Franklin D. Roosevelt, and in a decision of the U. S. Supreme Court written by Justice Oliver Wendell Holmes.

BUT public plants can and do deprive the people of the full use of electricity as well as private plants as we shall see. The key to the kind of success we are aiming at here lies, of course, in the lowest possible rates. The problem then turns on how we can achieve low rates and yet run the plant on the business basis demanded by the hard-headed citizen. Some of the necessary practices may here be indicated.

The public plant should charge its customers enough to pay all of its obligations out of rates and nothing from taxes.

Its rate schedules should be determined on the principle that each class of customers must pay the city what it costs to serve it and that there shall be no discrimination as between cus-

¶ "THE *public plant should charge its customers enough to pay all of its obligations out of rates and nothing from taxes. Its rate schedules should be determined on the principle that each class of customers must pay the city what it costs to serve it and that there shall be no discrimination as between customers or classes of customers.*"

tomers or different classes of them.

It should stand on its own financial feet. It may properly utilize the taxing power of the city to guarantee its bonds in case the city's credit is good and the constitutional debt limit has not been reached. But it should meet all interest and amortization charges out of rates as soon as it is fairly under operation.

It should have the right to finance construction from securities against the plant properties and income. All statutory and constitutional inhibitions against this or other legitimate methods of financing should be removed. In many instances such bonds would have a better chance in the market than general tax bonds. In imperative need of the time is the removal of antiquated legal chains which prevent the citizens of progressive municipalities from engaging in self-sustaining enterprises for their own welfare in fields which they always have had a legal right to enter. Another need is limitations upon nineteenth-century-minded Federal judges who assume jurisdiction over activities which are no concern of theirs.

It should pay out of earnings its annual interest and amortization charges until the plant is out of debt.

SHALL it provide for depreciation on its physical property in addition to amortization of its capital investment? That turns upon a question of policy—is it advisable to require the patrons of a plant to be paying for two plants at the same time, one for themselves and another for their children and grandchildren?

The life of a typical fuel plant is roughly from twenty to thirty years, that of a hydro plant much longer. The purpose of depreciation is to provide a fund to replace the original worn-out structures and equipment at the end of their usefulness, which is the equivalent of paying for it. But this is the exact purpose of the sinking fund or amortization provisions of most municipal plants.

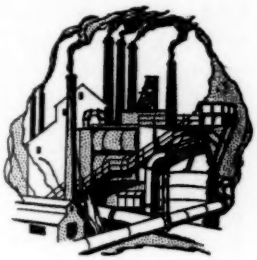
Why both?

In well set-up public as well as private financing, "maintenance" takes care of current repairs; the "contingent" fund prepares for unexpected catastrophes; an "obsolescence" reserve will provide for the installation of some new invention and for the retirement of a process which has suddenly become obsolete and uneconomical. Most public plants even pay for normal extensions out of earnings.

CLEARLY, then, the generation which amortizes the capital cost of its plant and then provides for depreciation is merely preparing to present the next generation with an equally good plant—debt free. Some municipalities like this idea and are doing it, but no private company would embrace that kind of generosity for a moment. The private practice is never to amortize investment but to refund securities, and the interest charge goes on forever.

The demand then that public plants which do set up sinking funds should also provide depreciation is out of line when urged by the advocates of "fair competition"—for example, the authors of the NRA code presented by the Edison Electric Institute. This is especially true when the Federal Trade Commission is revealing that very few private companies are keep-

"Taxless-town" Policy Encourages Municipal Extravagance



"THIS [taxless-town] policy not only defeats the prime purpose of the community plant—the largest possible use—but it is unsound economics. It shifts the tax burden from nonproducing land speculators and other tax dodgers to the power consumers. It encourages extravagance in other departments which should be made to stand on their own feet and it mitigates against all efforts to keep the power plant out of politics and on a business basis."

ing the depreciation commandment. Some are crediting to this account only around 1 per cent as against the standard requirement of 3 per cent. Samuel Insull is proving to have been a flagrant transgressor in this respect. Examiners are finding millions of dollars spent to build plants now dismantled or abandoned, still carried in the capital structure, serving as a rate base and not written off against depreciation reserves because sufficient reserves were not there.

THE municipal plant should pay its proportionate share of rent, legal services, or other services rendered by the city.

Should it pay taxes? That is a moot question for each community to settle for itself. There are good arguments on each side. In my judgment it is better to pay if for no other reason than to stop criticism. It will make very little difference in rates. The private companies only pay a national average of around 2½ mills per kilowatt hour sold for taxes, but one would think from the noise they make about it that it was as many *cents*.

As to plant extensions and improvements, here is another moot question. It may be sound enough to meet such requirements out of earnings to a limited extent. It is being done to a great degree in most municipal plants, but this cannot be carried too far if low rates are to be achieved at an early date. We must keep Mrs. Mary Smith in mind, as well as her children and grandchildren.

Now turn to the other side of the picture of sound business standards.

Having met its obligations out of rates, and all of them, the city power plant should not be required to play Santa Claus or sustain other municipal departments. Its rates should be adjusted from year to year to serve its customers at cost as nearly as possible. Any surplus reserves belong to the customers and should be returned in the form of reduced rates or pro rata bonuses as is being done in Ontario. The city plant should not be asked to light the streets and public buildings, pump the water, and furnish like municipal services gratui-

tously or below fair cost of service.

ABOVE all, it should not be forced to keep its rate schedules at high levels to create handsome surpluses which a pleased city council may promptly transfer to the general fund for the purpose of paying the city's taxes in whole or in part. That is the outstanding financial and social sin of a large proportion of our municipal plants today.

I am at war with the "taxless town" policy.

Mrs. Mary Smith may just as well be served by a private company. She should not be required to pay the taxes of Banker Jones.

This policy not only defeats the prime purpose of the community plant —the largest possible use—but it is unsound economics. It shifts the tax burden from nonproducing land speculators and other tax dodgers to the power consumers. It encourages extravagance in other departments which should be made to stand on their own feet and it mitigates against all efforts to keep the power plant out of politics and on a business basis.

THE power policy of the Tennessee Valley Authority includes a provision that municipalities purchasing Muscle Shoals current should not engage in this practice. Power Director David E. Lilienthal, in laying down that condition, has rendered a sterling service to the power consumers of the South which will materially contribute to the success of this public power project and set an example to the nation. It will not, however, make him popular with the local politicians. It should bring him the support of the people.

As to administration, public power plants as well as other municipal utilities in all but the smaller towns should be placed under the control of a special nonpartisan board which should handle its funds, determine its policies, and select its manager and technicians. The board and the public should repudiate political considerations in the selection of staff and even the "home boy" qualification should be given tertiary consideration. Politics can be kept out of management and out of the operating forces. It is being done in many places. In fact, it is easier to keep politics out of public power plants than to keep power companies out of politics.

THE prime requisite of a scientific accounting system, the necessity of which is assumed, is that the accounts of a public power plant be kept separate from all other departments of the city government.

Failure or refusal to do this is responsible in large part for the confusion over the true financial status of many municipal plants today and makes misrepresentation easy. Thousands of dollars turned into the "general fund" disappear and are not credited back. Hence the plant's accounts make a poor face showing when in fact it is more than solvent. It is many times the Martha of the municipal household and suffers her fate.

To test a plant's success by rates alone is foolish. To proclaim that a city plant has as high or higher rates than comparable private plants without taking account of what becomes of the money is unfair reporting, just as it is to omit the taxes paid by a

private company. There are no important "failures" of public plants when checked by a fair accounting system.

A THOROUGH cost accounting system should be installed for obvious reasons. Next, let us insist upon simplicity both in the form of rate schedules and of official reports easy of comprehension by the average citizen. Annual reports should be full, well illustrated, made interesting, and be available in pamphlet form. The success of the Seattle plant is due in no small part to the wholesome fashion in which the people have been kept informed of the progress of their "City Light."

It is not professed that the entire subject has been covered here, but the main principles are touched upon. A public plant run on these lines can supply electric energy at amazingly low rates and yet satisfy at least the consumer, the taxpayer, the bond holder, the Society of Accountants, the admirer of sound business principles, the meticulous student, and all who desire data for comparison between public plants and private plants but probably not the holding companies.

But let us not expect too much from "yardsticks."

After our clear-headed artificers, working unperturbed by the crotchets of one side or the other, have produced those happy scientific instruments there remains the task of getting them applied.

But this is another story as a study of the history of the industry would seem to show.

Facts Worth Noting

FROM 1927 to 1932 the average amount of electricity sold for domestic service increased almost 40 per cent.

* *

IN nine years the moneys made available for the construction of streets and highways in this country amounted to very nearly 20 billion dollars.

* *

ACCIDENTS at railroad-highway grade-crossings totaled 2,145 in the first nine months of 1933, a reduction of 250 compared with the like period in 1932.

* *

TODAY the cost per family for gas and electric service averages 20 cents per day as compared to the average cost of government of $1.10 per day per family.

* *

NORTH CAROLINA ranks fourth in water-power development, yet only six farms out of every thousand have electric motors. Only 5.4 per cent of the farms of North Carolina have electric light.

* *

BY virtue of the occupational taxes upon public utilities in the state of Washington, the utilities have been required to absorb more than $2,225,000 annually in state and Federal taxes, according to Governor Clarence D. Martin.

The Federal Government's Tennessee Valley Power Project

No. 3: Power Policy of TVA

In the first article of this series the author discusses the genesis of the TVA undertaking (see Public Utilities Fortnightly, March 15, 1934); in the second, he discusses the immediate and ultimate program of the Authority (see Public Utilities Fortnightly, March 29, 1934). The final article of the series will appear at an early date.

By MARTIN G. GLAESER

From the point of view of the readers of Public Utilities Fortnightly the power policy of the TVA is of supreme interest and importance. The main outlines of this policy are laid down in the act itself, but the policy has been further amplified by the Authority itself.

In addition to its general power to construct dams, reservoirs, power houses, power structures, transmission lines, etc., in the Tennessee river and its tributaries and to unite them into one or more systems by transmission lines, the Authority is authorized to produce, distribute, and sell electric power.

In this connection it is "declared to be the policy of the government as far as practical to distribute and sell the surplus power generated at Muscle Shoals equitably among the states, counties, and municipalities within transmission distance." It is further provided that the development of these power projects "shall be considered primarily as for the benefit of the people of the section as a whole and particularly the domestic and rural consumers to whom the power can economically be made available."

The Authority is planning to make the enterprise as nearly as possible self-sustaining. In order to do so it must, of course, sell this energy also to industry. The act provides, however,

> That sale and use by industry shall be a secondary purpose, to be utilized principally to secure a sufficiently high load factor and revenue return which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage

increased domestic and rural use of electricity.

As stated, the Board is authorized to sell surplus power to states, counties, municipalities, corporations, partnerships, and individuals, but in such sale it is to give preference to public bodies and to coöperative organizations "not organized or doing business for profit."

The term of these contracts is not to exceed twenty years. Where the contract is made with parties who propose to resell at a profit, the contract must contain a provision which will permit the cancellation of the contract on five years' notice if the Board needs the power to supply organizations doing business without profit.

The framers of the act had particularly in mind the promotion of rural electrification. To this end the Board is empowered in its discretion to construct transmission lines so that service may be extended to farms and small villages not now supplied at reasonable rates.

The Authority has always emphasized these promotional activities. Speaking through Director Lilienthal, whose special charge is this power utility, it interprets the power program as being aimed primarily at "taking from the backs of men and women in the valley some of their ancient and arduous burdens."

THIS, says Mr. Lilienthal, is the real meaning of the remarkable provision of the act whereby the Board is:

> Authorized and directed to make studies, experiments, and determinations to promote the wider and better use of electric power for agricultural and domestic use or for small or local industries, and it may coöperate with state governments—with educational or research institutions and with coöperatives or other organizations, in the application of electric power to the fuller and better balanced development of the resources of the region.

In fact, it was the power phase in this regional planning which the President had so prominently in mind when he made his first announcement. From another angle it appears, therefore, that this region is to be one of the main proving grounds for what has come to be known as the "decentralization of industry."

IF these are the *aims* of the enterprise what is to be the method? Briefly put, the procedure on its physical side is to be one of throwing out transmission lines, and on its legal side, of the negotiation of contracts.

So that the Authority may be in position to contract for the sale of power it is expressly authorized to use congressional appropriations, its own earnings or funds secured from the sale of bonds to purchase, lease, or construct transmission lines and operate the same. Conversely, it may lease government-owned lines to others.

Where public or other nonprofit-making organizations, singly or in concert, construct transmission lines to government-owned power plants or main transmission lines, the contracts for the sale of wholesale power may be for a 30-year period. Where there are legal difficulties in the way of these organizations the Board is directed to give the prospective purchasers ample time to smooth them away.

THE Board is also authorized to contract with other power sys-

tems for the mutual exchange of surplus power, for emergency or breakdown service, and for the conservation of stored water. It is thus that articulation and coördination with private utilities can be accomplished.

From the above it is evident that the Authority is to be, in the main, a producing and transmitting utility which sells power at wholesale and by means of long-term contracts. The distribution and sale at retail is to be, so far as possible, in the hands of local governments, coöperatives, or private utilities. We may say that in all essentials the Ontario Hydro-electric Power Commission with its operations is the prototype of the TVA.

The territory in which the authority proposes to sell this power is now largely occupied by the Alabama Power Co., The Mississippi Power Co., The Georgia Power Co., and the Tennessee Electric Power Co., all of them subsidiaries of the Commonwealth and Southern Corporation, a holding company. Municipally owned and operated utilities are scattered here and there.

This raises the question of the relation between the Authority's operations and the utilities now serving this territory.

IN one of its first announcements the TVA laid down certain fundamental principles in accordance with which it proposes to carry out the power program.

First of all, it recognizes the public utility character of the undertaking. If private interests conflict with public interests (such as securing the widest possible use of electric power) the latter must prevail.

In the second place, where there is such a conflict which can be reconciled without injury to public interests, the Authority stands ready to make such reconciliation. Potential and actual injury to private interests, while deserving of serious consideration, will not, however, deter the Board in executing its power program. Such injury is not a determining factor. The public interest in making power available at the lowest rate consistent with sound financial policy comes first.

In the third place, the Authority recognizes the right of a community to own and operate its own electric plant as a protection against unreasonable rates. This may take the form either of acquiring the existing plant or setting up a competing plant.

THE chief source of income will be receipts from the sale of power and fertilizer. There is very little in the act which sets forth details as to financial policies. The statute merely says that the net proceeds from such sales, "after deducting the

¶ "POTENTIAL *and actual injury to private interests, while deserving of serious consideration, will not, . . . deter the Board in executing its power program. Such injury is not a determining factor. The public interest in making power available at the lowest rate consistent with sound financial policy comes first.*"

cost of operation, maintenance, depreciation, amortization, and an amount deemed by the Board as necessary to withhold as operating capital, or devoted by the Board to new construction," is to be paid into the United States Treasury. We must therefore look to official announcements for further details.

On one point, however, the statute is specific.

The Board is required to pay 5 per cent of the gross receipts from the sale of surplus power to the states of Alabama or Tennessee, in proportion as such power is derived solely from water stored by dams in the respective states. Where the construction of a dam makes available additional power at dams below, 5 per cent of the proceeds from the sale of such additional power are divided equally between the two states. With the approval of the President these payments in lieu of taxes are subject to revision by the Board at 5-year intervals.

IN the statement of fundamental principles the Board had indicated its intention of confining service, at least initially, to certain definite regions, in order to get a compact, workable, and economic basis for its operations. This area was described as the region in the vicinity of Muscle Shoals and Norris Dam and the region immediately proximate to the route of the connecting transmission line, now under construction. These locations as well as others are shown on the map.

At a later stage it is contemplated to serve, roughly, the entire drainage area of the Tennessee river, and all of eastern Tennessee. This area, said the Board, should include several cities of substantial size like Chattanooga and Knoxville and, ultimately, "at least one city of more than a quarter million, within transmission distance, such as Birmingham, Memphis, Atlanta, or Louisville."

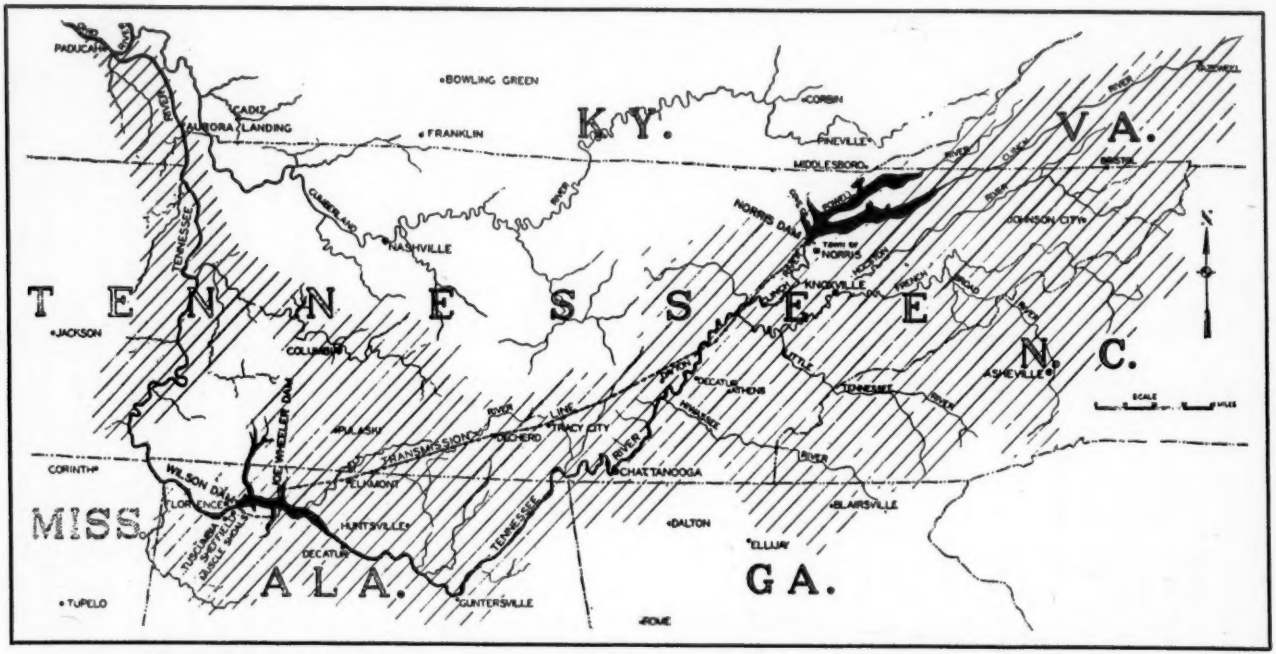
IN working out this unified area the Board indicated that it would "avoid the construction of duplicate physical facilities, or wasteful competitive practices." If the lines of privately owned utilities were needed, a genuine effort was to be made "to purchase such facilities from the private utilities on an equitable basis."

The Board warned, however, that this was not "to be construed in any sense (as) a commitment against extending the Authority's power operations outside the area selected," if public interests required. As justifying it in receiving applications to go outside, the Board specified "unreasonably high rates and a failure or absence of public regulation to protect the public interest." Another reason which might force the Authority to go outside would be "if the privately owned utilities in the area do not coöperate in the working out of the program."

It seems that such coöperation was quickly forthcoming.

On January 4, 1934, a contract was entered into between the Authority and the Commonwealth and Southern Corporation and its subsidiaries for the interchange of electric power and for the sale of land, transmission and distribution lines, substations, generating plants, etc., within a definitely defined area. With the physical prop-

TENNESSEE RIVER BASIN



General outline of the Tennessee River Basin, showing the site of the Norris Dam in relation to Muscle Shoals and General Joe Wheeler Dam and the route of the transmission line which will connect the three dams. The shaded area indicates the sphere of development by the Tennessee Valley Authority.

erties went franchises, contracts, and the going business. The purchase price to be paid to the several companies is as follows:

Mississippi Power Co.	$850,000
Alabama Power Co.	1,150,000
Tennessee Elec. Pr. Co.	900,000
	$2,900,000

EVER since the TVA first announced this power policy there had been alarmist cries that the Federal government had embarked upon a policy of indirectly confiscating the properties of privately owned utilities by setting up competing enterprises. Security owners were led to fear that their investments were no longer safe. In fact the whole venture was looked upon as a veritable Damoclean sword held over the public credit of these utilities.

"The wolf is at the door," cried the more extreme of these critics.

I shall state my views regarding the details of this contract and of other proposals made by the Authority, and particularly what meaning they may have in relation to our National Power Policy in a concluding article. It must suffice to say here that this agreement demonstrates that the TVA is minded to carry out the congressional mandate without destroying the prudent investment in privately owned utilities and without inaugurating a policy of national economic waste in the duplication of power facilities.

This contract as well as the earlier announcement of wholesale rates for electricity supplied from Muscle Shoals power plant and the promulgation of the first purchase contract with the publicly owned utility at Tupelo, Mississippi, are an earnest of the fact that a comprehensive and well-articulated power policy underlies the specific steps taken by the Board.

IT is, perhaps, unfortunate that the piece-announcement and formulation of this program should, with the prevailing psychology of fear, have led many to believe the worst. Yet, it would, no doubt, have been in vain earlier to point out that no project based so wholeheartedly upon a theory of regional planning and of regional conservation of natural resources could possibly have as its objective an irrational and malevolent attack upon the private wealth of legitimate vested interests.

At least, it could not avow this public purpose without stultifying itself in the considered economic judgment of informed and candid persons. Now, however, if these events be taken in conjunction with the purpose which lies back of another creation of the TVA, the Electric Home and Farm Authority, the truly beneficent nature of the Board's power policy should be manifest.

IN December the Electric Home and Farm Authority, Inc., was created by executive order of President Roosevelt as a financing subsidiary of the TVA. As announced at the time, the objective of this new facility is to make possible a wider and greatly increased use of electricity in the homes and on the farms of the states in the valley. Unequivocally, the announcement is:

> In order to carry out the program there must be a broad scale distribution of very low cost standard quality electric-using appliances and concurrently a revision downward of electric rates. The new

agency is based on a *coöperative* program in which the Federal government, the electric utilities *both publicly and privately owned*, the electric manufacturing industry and dealers will participate.

The Federal government proposes: (1) To assist in financing the consumer in the purchase of standard electric equipment. The capital of the Electric Home and Farm Authority consists $1,000,000 of common stock allocated by the President under the NIRA up to $10,000,000 of credit for financing consumer purchases will be extended by the Reconstruction Finance Corporation. It is anticipated that the balance of needed credits will be furnished by banks under specially developed plans.

The TVA proposes: (2) To secure reductions in electric rates *by agreement* with utilities publicly and privately owned so as to make the use of such equipment feasible for the average householder and farmer; (3) To engage in coöperative educational and research efforts to further lower the cost of such equipment and improve its adaptability.

It is hoped in this way to level the two barriers which primarily stand in the way of increased domestic and rural use of energy: high rates for energy and the high cost of electric appliances.

Mr. Lilienthal believes that "the electric utilities and the appliance manufacturers have been standing in their own and in each other's light," and that this coöperative plan "can break this vicious circle."

Activities such as these constitute the Authority's reply to assertions that the Federal government's policy of hydroelectric power development will glut the power market.

There is another aspect of this matter of power development, apart from the market factor, that should receive brief mention.

The TVA proposes to effect a substantial reduction in the cost of generating hydroelectric power and to make this low cost power available to all retail outlets within transmission distance. This is to be accomplished by realizing, step by step, the full hydroelectric power possibilities of the region. The program implies a single integrated system under public control.

In a recent address to the American Institute of Electrical Engineers, Chairman Arthur E. Morgan develops this conception at some length. We can do no better than to quote from his lucid exposition:

> The Authority has in view a policy which would lend to great economy in hydroelectric power generation. Water power in the future may have very stiff competition from both steam and Diesel

¶ "The *TVA proposes to effect a substantial reduction in the cost of generating hydroelectric power and to make this low cost power available to all retail outlets within transmission distance. This is to be accomplished by realizing, step by step, the full hydroelectric power possibilities of the region. The program implies a single integrated system under public control.*"

engine. Whether these three million kilowatts of potential water power in the Tennessee river system can be developed in competition with other sources of power will depend upon whether every possible economy is achieved in its development. If the cost of generating water power should be half a cent per kilowatt hour it may lose out before steam or the Diesel engine. If the cost of water power can be reduced to a quarter of a cent per kilowatt hour it may have a relatively clear field. . . .

Let me illustrate. Near the east boundary of Tennessee is a dam site which will provide vast storage capacity for an area of very heavy rainfall and run-off of a few thousand square miles. From this point down the Tennessee river to its mouth is a fall of roughly one thousand feet, nearly all of which can be used for generating power. A plan has been proposed by a private company for generating power at the upper site with a dam perhaps 200 feet high, and to administer this power plant as an independent industrial undertaking, perhaps for the operation of a large manufacturing plant. If this is operated as an independent unit it will be regulated with a view to its own needs. In determining how much storage can be economically provided in the original construction, only the value of storage to that plant alone can be considered. The management cannot invest money in this upper plant on the ground that the investment would be justified in the use of stored water at each of the eight or ten plants down below, in which it has no financial interest. Some of these lower plants may not yet be built. . . .

Now consider what would be accomplished by a single unified system, thoroughly interconnected by transmission lines and controlled from a single office. During wet seasons or wet years the storage dams would be closed until their reservoirs were filled, and all power would be developed from plants having no storage, or inadequate storage. If rains should be heavier on one tributary than on another, the full reservoirs would be drawn upon. If some reservoir had only enough capacity to store the flow for a few months, its supply might be used ahead of a reservoir that would store one or two years run-off. If during the low water of summer a freshet should occur on an uncontrolled tributary, that freshet flow could be used to the utmost, and an equivalent value in stored water would be saved. . . .

On some of the smaller tributaries of the Tennessee, sometimes at high elevations, there are reservoir sites of very large capacity, but without water enough to fill them. Those cheapest and most capacious sites could be developed by building dams, and then all surplus power could be used to pump water up hill into them from the Tennessee river. For off-peak hours at night, for a few wet months during the year, and for intermittent wet seasons, all surplus power could be used in pumping water into these high reservoirs which would have power plants to be used during peak loads or for a standby supply.

We pass now to a consideration of the final major aspect in the power policy of the TVA. This concerns the method through which a reasonable level of rates and a non-discriminatory schedule is to be vouchsafed the ultimate consumer.

Again the statute is singularly brief and general in its statement of the relevant principles. The exact nature and extent of regulatory control will have to be made clear by the Board in subsequent administrative regulations.

The statute proposes that control over rates shall be through the medium of the purchase contract. The congressional power trenches here upon ground hitherto regarded as more or less left to the police power of the states.

Where the sale of surplus power is to any person or corporation engaged in the distribution and resale of electricity for profit the mandate of the statute is clear enough. The purchase contract must provide that the resale utility *agrees* not to sell to the ultimate consumer at prices that "exceed a schedule fixed by the Board from time to time as reasonable, just, and fair." If the reselling agency exceeds the schedule as fixed, "the contract for such sale between the Board and such distributor of electricity shall be voidable at the election of the Board." In other words, the remedy for taking what the Board be-

lieves to be an excessive profit or for departing from the rate differentials as fixed in the schedule is the power to rescind the purchase contract.

WHERE the sale of surplus power is to a public or coöperative agency not organized for profit the purchase contract must provide "that the electric power shall be sold and distributed to the ultimate consumer without discrimination as between consumers of the same class." If a discriminatory rate or other concession is given, the remedy again is that the purchase contract "shall be voidable at the election of the Board."

It should be noted that the act in this instance deals only with the matter of discrimination and leaves untouched the delicate matter of profit, excessive or otherwise, to the supposedly nonprofiteering distributor. Here, evidently, is a hiatus in the law. The Authority has attempted to cover the omission by providing in the Rules and Regulations, supplementary to the contract and agreed to by the purchaser, a section relating to "Disposition of Customers' Revenues." In this the return on the customers' or retail utilities' equity is limited to 6 per cent per annum.

THESE are the essentials in the power policy of the TVA. Together with the other features, previously set forth, it is the Roosevelt administration's interpretation of the New Deal in handling an important segment of the public utility issue. What is the meaning of this challenge to our nation-wide handling of the public utility problem?

In the concluding article in this series of articles on the Federal Government's Tennessee Valley Power Project, which will appear in an early issue of this magazine, DR. GLAESER *will give his own answer to that very important question.*

"The Ideal Public Utility"

"THE ideal public utility," says the *Christian Science Monitor,* "is not difficult to define. It is an organization of men and equipment established and maintained to render first-class service to its customers at reasonable rates based on sound financing of the enterprise, a cultural wage to its employees, and a fair return upon a just capitalization. Such a company has an alert management keen to bring the latest means of utilizing its service to the communities it reaches, eager to lower its unit prices as profitable business increases, and to share with its customers prosperity to which they have contributed. Under the stress of current tax burdens it redoubles its efforts to sell its product, knowing that the best and apparently the only road to prosperity is that of expanding business. It is determined to safeguard so far as possible a fair return to those whose savings have been intrusted to its development, but it is thinking less about constitutional rights than of economical administration, friendly relations with its customers, good treatment of its employees, and rendering the full measure of devoted service to those whose patronage enables it to live."

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

J. F. McLAUGHLIN
President, Puget Sound Light and Power Company.

"Now this 'power trust' propaganda is largely political racketeering."

JAMES M. BECK
U. S. Representative, Pennsylvania.

"Our government, now spending $40,000,000 a day, is rushing onward to the abyss of bankruptcy."

ARTHUR E. MORGAN
Chairman, Tennessee Valley Authority.

"The Authority (Tennessee Valley) is refraining from any campaign to take customers from private utilities."

HUGH S. JOHNSON
National Recovery Administrator.

"When you ask what they (the great leaders) propose, you find they propose exactly the course that brought the wreck."

HERMAN BLANK
Assemblyman.

"Perhaps the safety of consumers' rights might best be assured by government regulation of utilities, as some suggest."

SAMUEL FERGUSON
President, Hartford Electric Light Company.

"In our business, our first duty is to give uninterrupted service to the public and therefore it is not proper for us to become subject to a strike call."

PAUL A. WALKER
Chairman, Oklahoma Corporation Commission.

"The whole practice by which a public utility system trades with itself by transactions between the holding company and operating subsidiaries is fundamentally vicious."

S. WELLS UTLEY
President, Detroit Steel Casting Company.

"When a single individual, either personally or through agents, makes the law, interprets the law, and apprehends violators, we have present all the essentials necessary for dictatorship."

ELMER THOMAS
U. S. Senator from Oklahoma.

"In peace time, with no emergency save the greed for gain, the only real dangerous, destructive, and inexcusable inflation this country has experienced in 150 years was the bankers' credit inflation responsible for and terminating in the 1929 crash now conceded to be the worst depression in history."

Illinois Holding Company Law

Stringent provisions of the new act requiring commission approval of contracts of utility companies with affiliates ameliorated in practice as to routine matters by the legal fiction of advance consent.

By IRVIN ROOKS
ATTORNEY, ILLINOIS COMMERCE COMMISSION

PUBLIC utility regulation in respect to one of its gravest problems—the holding company, with all of its corresponding ramifications and complexities—has been given considerable impetus by recent legislation in Illinois, affording in some measure at least a greater degree of supplementary control over the utilities by the commerce commission.

House Bill Number 845, adopted by the Illinois legislature and approved July 8, 1933, sets out the method of procedure adopted to cope with this vexatious problem.

By virtue of § 8a of the new law it is provided that the commission shall have jurisdiction:

1. Over all holders of one per cent or more of the voting capital stock of all public utilities in order to enable the commission to require the disclosure of the identity in respective interests of every owner of any substantial interest in such voting capital stock;

2. Over affiliated interests having transactions, other than stock ownership and receipt of dividends thereon, with public utilities to the extent of access to all accounts and records of such affiliated interests relating to such transactions;

3. Authority to require such reports with respect to such transactions as the commission may prescribe. Provision is also made for the filing of and approval by the commission of all management, construction, engineering, supply, financial or similar contracts, or arrangements for the purchase, sale, lease, or exchange of any property with any "affiliated interest."

In addition, the commission is authorized to disapprove such contracts if found to be contrary to the public interest and every such contract or arrangement not approved shall be void. The act further authorizes the commission to waive the filing and approval of such contracts where the total obligation incurred does not exceed five hundred dollars.

THE phrase "affiliated interests" is defined to include:

(a) Every corporation and person owning or holding directly or indirectly 10 per cent or more of the voting capital stock of such utility;
(b) Every corporation and person in any chain of successive ownership of 10 per cent or more of the voting capital stock;
(c) Every corporation, 10 per cent or more of whose voting securities is owned, directly or indirectly, by such utility;
(d) Every person who is an elective officer or director of such utility or of any corporation in any chain of successive ownership of 10 per cent or more of voting capital stock;
(e) Every corporation which has one or more elective officers or one or more directors in common with such utility;
(f) Every corporation or person who or which the commission may determine as a matter of fact, after investigation and hearing, is actually exercising any substantial influence over the policies and actions of such utility; and
(g) Where such substantial influence is exercised with one or more other corporations or persons with which or whom they are related by ownership or blood relationship or by action in concert.

It is possible that the phrase "affiliated interests" as defined in the act is too broad. However, several other states, including New York, Iowa, Massachusetts, New Jersey, Kansas, and Wisconsin have adopted similar legislation on this subject.

SEEMINGLY the legislature intended, among other things, to prevent the improper enrichment of affiliates at the expense of operating utilities, to avoid corrupt transactions, and rigidly to oversee intercompany profits.

The query then is first, whether or not this act is designed to cope with subtle transactions with holding companies, and second, with some of the measures adopted by holding companies to avoid these restrictions.

By way of temporary digression, a definition of the term "holding company" becomes of primary consideration.

Broadly speaking, a holding company may comprise any company holding securities in any other company. Yet this would seem to include every large business corporation in the country. Many authorities apply the nomenclature of a holding company only to a company actively exercising control over another company, while a minority of legal writers would seem to make ability to control the deciding factor. However, the term "holding company" is rapidly becoming somewhat anomalously identified with managerial functions. This is particularly true of the approach to the holding company problem from the viewpoint of rate regulation.

WHERE, however, in a parent and subsidiary corporation hook-up the control is so great that the holding company is practically an operating company, it is of course possible for the state commission to pierce the veil of the corporate entity and scrutinize the interest behind the corporate fiction.

Nevertheless, whether or not a regulatory tribunal should exercise a direct control over a holding company is at best a lively issue susceptible of well-defined affirmative and negative responses. It would appear

Commission's Need of Holding Company Information

"In transactions between utility companies and 'affiliated interests' it is of course possible to conceive of every form and degree of relationship, involving as it does innumerable complicated transactions. It is evident then that the most complete information about every feature of each transaction must be supplied to the commission to afford intelligent regulation."

that if a state commission has not control over a holding company it is powerless to prevent malcombinations of properties. On the other hand, the delay incident to regulation has been advanced as interfering with the freedom of action and initiative of skilled business executives.

It must be borne in mind that the actual management of utility companies has in many cases passed into the hands of holding companies or affiliated corporations and that the holding company device provides managerial, purchasing, engineering, financial, accounting, advertising, and legal services. Accordingly, intercompany transactions as here noted often provide the procedure by which profits are tapped in the guise of operating expenses or capital charges.

Thus in order to determine more convincingly whether or not a fair return accrued from utility operations, the act under consideration here was enacted. It is of special importance then to observe the legal setups concocted to meet the old adage concerning the cumbersomeness of commission practice.

By a general order the commission established certain rules governing routine transactions under the new law applicable alike to all utilities. Under this general order, routine banking transactions specified as the opening of bank accounts, the deposit and withdrawal of moneys from such accounts, and the making of time deposits with banks in the ordinary course of business, are not considered to be within the purview of the provisions of § 8a. Also, as mentioned, contracts and arrangements with affiliated interests involving less than $500 are excluded from the provisions of the act.

By a first supplemental order the

commission's approval is further deemed not to be required for contracts and arrangements with "affiliated interests" for advertising space or services where the consideration is not in excess of the published standard rates.

A second supplemental order dispensed with the necessity of the commission's approval of contracts by a utility with an "affiliated interest" for the furnishing by the utility of utility service at a duly filed rate, and also did away with the commission's consent and approval to compromises or settlements with customers in financial difficulties where the amount compromised does not exceed $5,000 and the compromise with the utility was on as favorable terms for the utility as the settlement made on behalf of such customer with other creditors similarly situated.

AGAIN, the alleged hardship of commission regulation and control has been alleviated by the issuance of orders of general authorization to specific utility companies to enter into certain routine transactions without prior commission approval.

The legal artifice of advance consent was in effect resorted to.

The precise nature of the procedure adopted was to permit the utility companies to present petitions containing, among others, the allegations that certain routine transactions involving more than $500 and properly within the scope of the petitioner's business were necessarily entered into with "affiliated interests" and that the payment for such was not in excess of the prevailing current or market price which the petitioner would be required to pay if such contract or arrangement were entered into with a reliable party other than an "affiliated interest"; and that certain of these contracts or arrangements were of an emergency nature requiring prompt action so that a delay of even forty-eight hours within which such contract or arrangement could be submitted to the commission for approval would subject the petitioner to financial loss and possible inability properly to perform its public utility functions.

BASED on that petition the Commission entered an order of general authorization, finding:

1. That it was frequently necessary for the petitioner to enter into fair and legitimate contracts and arrangements with "affiliated interests" as defined in § 8a involving a sum amounting to more than $500;
2. That such contracts and arrangements fell within the scope of the petitioner's business, and that some of such contracts and arrangements were of an emergency nature requiring action by the petitioner within less time than it would take to submit the contract or arrangement to, and secure approval from, the commission;
3. That it would be in the public interest to approve such contracts and arrangements.

The commission therefore ordered that approval be given to the company to enter into such contracts or arrangements with "affiliated interests" provided that the consideration paid therefor was not in excess of the prevailing market or current price and not in excess of the price that would obtain if the contract or arrangement were with a reliable party other than

an "affiliated interest"; that no contract or arrangement should be entered into if the same would reasonably be expected to result in any improper advantage to either or any of the parties; that such contract or arrangement must be fair, legitimate, necessary, or desirable and not contrary or opposed to the public interest; and provided further that no such contract or arrangement entered into should be for a longer period than one year and that the maximum obligation under any such individual contract or arrangement should not be in excess of a specified maximum figure depending upon the volume of petitioner's routine business.

It was further ordered that the company file a monthly report with the commission setting forth a reliable digest and the basis of the relationship of affiliated interest with respect to each of the contracts or arrangements entered into during the preceding calendar month. If the commission determines that the approval before granted should be reconsidered the burden is then on the utility company to show the fairness and desirability of the contract or arrangement in question.

In transactions between utility companies and "affiliated interests" it is of course possible to conceive of every form and degree of relationship, involving as it does innumerable complicated transactions. It is evident then that the most complete information about every feature of each transaction must be supplied to the commission to afford intelligent regulation.

Regulation, however, is here restricted by that body of law and precedent holding that, in the absence of fraud, the making of a contract is assumed to be within the managerial discretion of the officers and directors of the utility company.

It is apparent then that by § 8a of the Illinois law the commission will be better able to recognize the parties to the contract or arrangement and their relations to each other. Commission regulation is thus extended—undoubtedly a step forward in the right direction. This results in the attainment of a greater degree of supervision and control over intercompany transactions. It thus enables the commission to place its finger, so to speak, on the pulse of these arrangements.

However, only time and future practice can best illustrate the effectiveness of the procedure herein adopted to cope with those cases falling within the purview of § 8a of the Illinois Public Utilities Act.

The Economic Emergency and Constitutions

"We pronounce as the most certain of law that there has never been, and can never be, an emergency confronting the state that will warrant the servants of the Constitution waiving so much as a word of its provisions. Armed men may destroy the government. Miltiary rule, or the rule of the mob, may replace the orderly processes that have been our fortune since sovereignty was granted us by the United States. But no species of reasoning, no ingenuity of construction, no degree of emergency, can persuade us that the Constitution is without potency or dissuade us from performing our duty as its sworn officers." Walker *v.* Bedford (Colo. 1933) 26 P. (2d) 1051

What Others Think

The Lord High Inquisitor Takes a Bow

THE Wizard of Woz was weary. All day he had been busy in his Throne Room with the First and Second Circle of Wizards, figuring out new plans for getting rid of the large amount of money which had to be spent in order to bring back the Golden Age of Woz. It was a thankless and tiresome task. The First Circle of Wizards at times made him so exasperated that he felt like sending them packing back to their Mystic Schools in the Provinces where he had found most of them teaching stubborn little students in magic such naïve and elementary parlor tricks as changing a pig into a farmer's vote or changing red ink into black ink, and so forth.

"Too many wizards around this place!" grumbled the great Wizard, as he listlessly changed a court attendant into a bell boy and told him to beat it out after some smokes and not to forget to bring back the right change. "That's the trouble, all right. Overproduction! Too many magicians and not enough magic. Now maybe if I were to plow under every fourth wizard and slaughter all the students before they grow up into practicing magicians —"

THE Wizard's meditation was broken by the court announcer:

"His Excellency, the Lord High Inquisitor!"

The great doors opened and there advanced a tall, dignified gentleman encased in full knightly armor, carrying a fierce looking battle-axe in addition to a long sword and several smaller daggers which dangled from his belt chain. He bowed stiffly to the Wizard and said in a low voice:

"My humble compliments to His Highness the Great Wizard of Woz."

THE Wizard looked at him with a puzzled expression and answered:

"Thanks—the same to you. By the way, aren't you afraid of hurting yourself with all that cutlery and hardware you keep hauling around with you?"

"I need them in my business," said the Lord.

"I suppose so," said the Wizard, trying to remember just what was the business of the Lord High Inquisitor.

"I use them to break up monopolies and cut restraints of trade and so forth," continued the Lord.

"Oh, yes," said the Wizard, "I remember now. Sometimes I get the Antitrust laws and the Recovery laws confused. Now, you're supposed to break up unlawful monopolies and Lord High Crack-Down is supposed to look after the lawful ones. Is that right?"

"That's right," replied the Lord, "but it's not always easy to distinguish. Maybe you can tell me when is a monopoly not a monopoly?"

"I could probably answer that one right off," said the Wizard, looking very learned, "but I make it a practice never to solve riddles out of office hours. So what's the answer?"

"Well," replied the Lord, carefully polishing his battle-axe with an old *subpœna duces tecum*, "I'll admit I'm stumped. I used to think that the good monopoly could be distinguished from the bad monopoly by a Blue Eagle label, but the Supreme Court—"

At the mention of the Supreme Court the Wizard sat bolt upright trembling and interrupted:

"Haven't you passed your tests with the Supreme Court yet?"

The Lord looked downcast.

"Just flunked a test in Mergers last March. How have you been getting along?"

The Wizard sighed.

"Oh I passed in Mortgages and just skinned by on my Milk test, but I'll admit I'm worried about the Blue Eagle."

A TROUBLED look passed over the Wizard's countenance followed by a look of annoyance. He snapped crossly at the Lord:

"You don't mean to stand there and tell me that you've come here just to plague me about trivial troubles with law studies?"

"Oh, no, no," said the Lord, "quite the contrary. I've come to report progress and success in the accomplishment of my duties."

"For example—" prodded the Wizard skeptically.

"Well, take this electric utility investigation I started over five years ago," said the Lord, pointing a long forefinger at the Wizard. "Do you know how much money has been saved for the electric consumers of the United States by way of rate reductions since this investigation started?"

The Wizard frowned.

"Do you?" persisted the Lord.

"How many times," spluttered the Wizard angrily, as he squirmed under the pointing finger of the Lord, "must I tell you not to ask me questions out of office hours? That's what comes of having a reputation as a wizard! All right, Mr. Bones, I'll bite. How much money has been saved the electric consumers by way of rate reductions since you started your inquisition?"

"More than $100,000,000!" said the Lord proudly as he removed his visored helmet with a sweeping gesture and made a deep bow.

"I suppose you did it single-handed," suggested the Wizard, as he nonchalantly changed a near-by inkpot into an apple and proceeded to eat it solemnly.

"WELL," replied the Lord archly, raising his eyebrows, "the fact remains that out of total electric reductions recorded in the last four years in the amount of $118,747,654, more than half or $66,454,240 were made by utilities affiliated with holding companies which have been subject to examination by the Federal Trade Commission—."

"Who's that?" asked the Wizard.

"That is I," said the Lord, "that's my trade name—the Federal Trade Commission. There were many more reductions ordered by state authorities following disclosures made by the Federal inquiry."

"A pretty good record, M'Lord," admitted the Wizard cheerfully. "What did the bill come to?"

"A trifle over a million — about $1,200,000, I should say offhand," shrugged the Lord.

"How did you figure the total?" asked the Wizard, changing the apple back into an inkpot and beginning to write sums on a piece of magic paper.

"That part was easy," said the Lord. "I just checked over the files of the *Electrical World* for four years and made a note of every time a rate reduction was mentioned."

"Did that come to $118,747,654?" asked the Wizard.

"Well, not exactly. You see, if a reduction was made during 1930, I figured that it continued through to the end of 1933, and so I multiplied it by 4. Reductions made during 1931, I multiplied by 3, and so forth."

"In other words," said the Wizard, busily scratching off figures, "a rate reduction made in 1930 was credited four times in your total; 1931 rate cuts got triple credit and so forth."

"That's right!" said the Lord.

"Heh-heh," chuckled the Wizard, "that *is* pretty good. I'll have to tell that one to the Director of the Budget. But it's a good thing the citizens of Woz can't do that with their business losses when they make out income tax returns. By the way, who asked you for this report?"

At this point the irrepressible Sir Tumblebug, who was allowed to hang around the court to amuse the Wizard, came dancing across the room singing clumsily,

In the Spring, a young administration
Lightly turns to more appropriation!

The Wizard politely hid a deepening grin with his hand, while the Lord looked very fiercely at the Tumblebug, who continued his idle song:

Washington basks in the Spring, tra-la!
Sweet cherry blossoms a-bloom, tra-la!
Commissions for this and for that, tra-la!
Will know of their new budgets soon, tra-la!

The Lord shook his battle-axe angrily and cried out sternly:

Flowers that bloom in the Spring, tra-la,
Have nothing to do with case!

"Never mind the Tumblebug," said the Wizard soothingly, "he's harmless; just an idle breeze that blows about the Fourth Estate. Come, my Lord, although I don't recall that anyone asked you to make this report, it shows plainly that you have done a good job. You may sit on my Right Hand!"

The Lord High Inquisitor bowed once more and with a parting scowl at the Tumblebug gravely ascended the platform to sit on the Right Hand. Just then the court herald announced a new arrival.

"An emissary from the Province of York!"

The Wizard stiffened.

"Have you made sure that he brought no more of those waterway treaties with him?" he asked suspiciously.

"Yes, your Highness."

"Very well, admit him."

The doors opened and a breathless messenger was admitted.

"I come, your Highness, as a special representative of the Public Service Commission of the Province of York and bear news of the report of that body to the Legislature."

"We seem to be getting a great many reports today," said the Wizard patiently. "What's in the report?"

"The gist of it is," said the messenger, "that all the rate reductions ordered by the Commission of York to the end of 1933, compared to 1930, amount to $28,500,000."

"Splendid," said the Wizard, "that's one year less that the Lord High Inquisitor had to work on. I suppose you've accumulated the separate reductions for the number of years they have been in force just as the Lord did in his report?"

"Oh no, your Highness," said the messenger shaking his head timidly.

"Heh-heh," chuckled the Wizard, "it looks like the big city slickers in York can learn a trick or two from the Lord High Inquisitor. Now if you had accumulated your reductions, I'll bet you could show more than $50,000,000."

"Perhaps, Your Highness," admitted the messenger, "but the Commission's figures include some gas and telephone rate reductions."

"A mere fraction," shrugged the Wizard, "not more than 25 per cent and probably much more than offset by the one year you missed in your calculations. Anyway, I'm going to put the Commission down to share $50,000,000 credit out of the $118,747,654, claimed by the Lord High Inquisitor. Come, you too may sit on my Right Hand."

The breathless messenger had scarcely seated himself beside the Lord High Inquisitor, who regarded him somewhat suspiciously, when the herald announced an emissary from the Railroad Commission of the Province of Golden Gate, who was given credit for a tentative $25,000,000, according to the Wizard's calculations, and told to sit on the Right Hand. After him an emissary from the Province of Badger showed up and rated $18,000,000 and a seat on the Right Hand.

There followed a steady stream of provincial messengers. Fifteen millions, thirteen millions, twelve millions, until finally the Wizard, dizzy with figures, shouted:

"Hey, somebody shut that door and

bolt it and be quick about it!"

The Tumblebug motioned for the Wizard to bend over for a confidential message.

"There are so many on your Right Hand now," whispered the Tumblebug, "that rumors are afloat that you are swinging to the Right; you'd better put the next batch on your Left Hand."

"A good idea," said the Wizard as he began to add up the reductions credited to the different Provincial Commissions. The result amazed him. It appeared that electric rate reductions ordered from 1930–1933 inclusive aggregated much, much more than the original 118 odd million which the Lord High Inquisitor had claimed.

"There's something wrong here," said the Wizard with a bewildered air, "send for the Court Statistician."

The Court Statistician, an old green earthworm with many pencils stuck behind a pair of large floppy ears, crawled into view.

"Maybe you can tell me just how much electric rates have been reduced on an average since the Lord High Inquisitor got on the job," asked the Wizard.

The Statistician fussed around with a few books which he carried and finally announced:

"I don't know about these commission reductions. So many of them get hung up in the courts. But I can tell you that total cost of electricity consumed in 1933 was 3.2 per cent less than in 1932."

The Lord High Inquisitor smiled loftily.

"And according to the U. S. Census Bureau, the national average rate of 5.5 cents per kilowatt hour for residential service in 1932 was 25 per cent less than the national average rate of 7.3 reported in 1927.

THE Lord High Inquisitor beamed.

"And the average rate per kilowatt hour in 1927," the worm droned on, "was 7 per cent less than the national average rate reported in 1922."

"Hey, wait a minute," called the Lord High Inquisitor in alarm. "Hold on! That was before I took charge. I can't take credit for that!"

"Maybe we can," said the Commission representatives in chorus.

"And the national rate per kilowatt hour in 1922 was 10 per cent less than in 1916," continued the worm, "and the national rate per kilowatt hour in 1916 was 11 per cent less than in 1911."

The Commission messengers began to get uneasy. This was getting before *their* time.

"And the national rate per kilowatt hour in 1911 was 18 per cent less than in 1906," continued the worm.

"Stop him somebody," cried all the Commission messengers, "that was before regulation started!"

The Wizard ordered the worm to be taken away and as they carried him out his voice trailed off monotonously—

"And the national rate per kilowatt hour in 1906 was 22 per cent less than in 1901—"

The Wizard arose and said weakly:

"Well, gentlemen, it appears that the national average rate has been reduced over 60 per cent since 1901. I don't know just how to give credit for some of these reductions which occurred before all of you were born. It might be due to forces which are unknown even to me the Great and Terrible Wizard of Woz."

The Lord High Inquisitor took a bow.

—JOHN TRACY FLEMING.

SAVINGS TO ELECTRIC POWER USERS. Press Release of Federal Trade Commission, Washington, D. C. March 12, 1934.

¶ WILL *the farmers of the country take kindly to governmental regulations of their business, including price fixing? This question is considered in* "FARMING AS A PUBLIC UTILITY" *by* NEIL M. CLARK *in the April 26th issue.*

Will Federal Regulation of Communications Mean Censorship?

"IT'LL be a long time between drinks in these parts!"

That, in effect, is what the voters of North Carolina said to the voters of South Carolina at the respective state referendums on the repeal amendment to the Federal Constitution last November.

The Federal Radio Commission took judicial notice of this arid state of affairs in the Carolinas and the desire of the citizens there to keep it that way. On February 5, 1934, the commission issued the following statement:

> The Federal Radio Commission calls renewed attention of broadcasters and advertisers to that section of the Radio Act of 1927 which provides that stations are licensed only when their operation will serve the public interest, convenience, and necessity, and asks the intelligent coöperation of both groups in so far as liquor advertising is concerned.
>
> Although the Eighteenth Amendment to the Constitution of the United States has been repealed by the Twenty-first, and so far as the Federal government is concerned there is no liquor prohibition, it is well known that millions of listeners throughout the United States do not use intoxicating liquors and many children of both users and nonusers are part of the listening public.
>
> The commission asks broadcasters and advertisers to bear this in mind.
>
> The commission will designate for hearing the renewal of applications of all stations unmindful of the foregoing and they will be required to make a showing that the continued operation will serve the public interest, convenience, and necessity.

THIS created a novel regulatory question, indeed. Consider the plight of the broadcasters. On one hand, they have generous and willing sponsors for programs that will tell the public about the succulent advantages of true Bourbons, etc. On the other hand, they have a threatening Federal commission that would put them out of business in a jiffy if sufficiently aroused. What to do?

A courageous independent broadcasting station in New Jersey took the first timid dive into questionable waters; or should we say questionable liquors? Since then a number of other station operators have been unobtrusively shedding their inhibitions of censorship and slipping into the golden pool of advertising emolument. The Jersey station got around the ticklish problem of "serving the public interest" within the limits laid down by the radio commission by an ingenious but somewhat amusing device. Before the "wet" program went on the air, an announcer solemnly reminded his radio listeners that liquor was still unlawful in a number of states, that thousands of people still do not use it, and that it was generally conceded to be improper for children. So-o-o-o-o! The announcer concluded gravely:

> This program is sponsored by the manufacturers and distributors of gin, a spirituous liquor having an alcoholic content in excess of 3.2 per cent by weight. If you are listening to this program from a state, county, or other political subdivision where the sale of liquor is unlawful, if you are offended by suggestions as to the use of liquor in your homes, if you are a minor or are responsible for minors listening to this program, kindly coöperate with us in obeying the law and tune out this program —now!

HERE is real diplomacy. It puts the burden of contamination directly upon the "contaminee." It leaves squarely up to the listener to decide whether he wants to be contaminated or not. We can readily envision the result of this honest warning in the drawing-rooms of the Carolinas. We can see strong men starting up from their newspapers and stumbling over hassocks in their haste to cut off the Unlawful Influence. We see little children pausing wide eyed in their play with toys to totter over to the radio to switch off the Voice of Evil. It is a pretty picture and we hope it is true.

Perhaps of more lasting general importance than the question of whether

or not we should be allowed to listen to radio programs which take for their signature the Heidelberg Stein Song, or Down Where the Wurzburger Flows, is the question of whether the Federal Radio Commission is acting within its statutory authority to regulate radio broadcasting when it rules off the air radio programs because they are literally "all wet."

The Federal Radio Act does not give the commission power to censor programs. The commission itself has denied that it exercises any censorship over programs.

THE act expressly provides, for example, that where a candidate for political office is given access to the radio, equal access must be given to his political opponents, provided, of course, they are willing to pay for the privilege. Even the broadcasting of indecent or salacious material is not specifically proscribed by the Federal act. Such policing of subject matter is presumably left to the state in which the broadcast originates. Courts have held, for instance, that possession of the Federal license does not relieve the broadcaster of liability for slanderous statements made over its station, which implies that penalties for programs that offend public health, safety, or morals are matters for the local authorities.

Just the same, the Federal Radio Commission achieves the object of censorship in an indirect manner just as effectively as if it required every program to be stamped with its official *Nihil obstat!* Radio broadcasters are called on periodically to defend their requests for license renewals. They must convince the commission that their continued operations "will serve the public interest, convenience, and necessity!"

Oh magic phrase! What legal wonders are accomplished in thy name!

During the last two years the commission refused to renew the broadcasting license of a nationally known "goat gland doctor," upon whose professional competency the medical groups have cast grave suspicions. Likewise, it refused to renew the license of an evangelist whose programs smacked of a strong Ku Klux Klan flavor. Of course, this isn't censorship—officially. But what would you call it?

DAVID Lawrence, nationally known political analyst, discusses the subject from this angle:

> If it is conceded that the Federal government has the right to censor what shall be heard, then it is an easy step to assume that the Federal government has the right to say what shall be read. Thus it is well known that the printed page contains alluring announcements which, theoretically at least, urge greater consumption of alcohol beverages. If the Federal Radio Commission, which derives its powers from an act of Congress, is upheld in its right to say that children or nonusers of alcohol shall be forbidden to hear anything about the subject, it might be argued that the Post Office Department had the right to bar from the mails announcements about liquor or food products or beverages of any kind.
>
> There has been for some years, in fact until last month, a statute forbidding the circulation through the mails of publications containing liquor advertising, but this was never tested as to constitutionality because its passage came so close to the adoption of the Eighteenth Amendment, when the manufacture and sale of alcoholic beverages of all kinds were prohibited.
>
> There is a disposition of the radio commission to contend that the present law makes it the duty of the commission to respect complaints from listeners. While the official announcement declares that it will designate for hearing on their renewal applications for licenses all station managers who are unmindful of the new rules on liquor advertising, the unofficial comment is that such steps will be taken only when there is public complaint. The inference is that this will be one way of satisfying complaints from dry areas of the country or from those sections where it is presumed children and others will promptly take to the use of alcohol the moment they hear about it on the radio.

Mr. Lawrence infers that the power being exercised by the radio commission, if developed, could be used to impair the fundamental prerogatives guaranteed by the constitutional Bill of Rights, particularly the freedom of speech and press. Looking at the matter in this light, the recent bill introduced in Congress (and apparently as-

© 1934, New York Tribune Inc.

A STRANGE CREATURE APPEARS ON THE ECONOMIC HORIZON

sured of enactment) to create a communications commission to take over, among other things, the functions of the radio commission deserves special scrutiny.

THE *San Francisco Chronicle* discusses this angle editorially at some length. It states:

If such a Federal commission, with authority over telegraphs, telephones, and radio, were to be clothed with a power to license the telegraph and telephone as radio is now licensed, then the mechanism would be ready at hand for censorship if there were a will to use it.

And if, as a prerequisite to obtaining a license, a telegraph or telephone company were obliged to accept the entire act and all its legal implications in advance,

thus signing away its constitutional rights, the conditions for enforcing censorship would then be ironbound.

All that would be needful would be the will to enforce censorship. Depending for its existence on a revocable license from the Federal government, what telegraph company could resist an order from the Federal government to censor a telegram to a newspaper? The power for such dictation would be complete.

In the President's view the affirmation, in the newspaper code, of the constitutional guaranty of the freedom of the press was "surplusage." Perhaps it was, since a code cannot add force to the Constitution.

On the other hand, the newspapers thought it was necessary. Perhaps it was, for perhaps, while a code cannot add force to the Constitution, it might conceivably take some force away if an industry, signing a code, thereby signed away its constitutional rights.

What has given doubts to the newspapers, more than the language of a code, is the growing tendency at Washington to try to smear all free criticism, including the honest. General Johnson has given us many examples. Inviting criticism, he at the same time reaches for a brick. Secretary Early's slap at Colonel Lindbergh was a prime example. The habit has become widespread in Washington. It is a habit that fathers a wish for censorship.

The freedom of the press is the sole hope of freedom for the people. A dictatorship cannot endure a free press, for with one it cannot maintain itself continuously. A dictatorship—be it Communist, Fascist, or Nazi—always puts the press under its heel. Then the people know nothing because they can hear only what the dictator chooses to let them. A free press is the sole guarantee of a free democracy.

We do not fear that a censorship of the press will be set up. We do not believe the American people would stand for it. At the same time, it is just as well that the mechanism of a censorship be not set up. Someone, some day, might be tempted to use it.

MOST of us have grown somewhat callous to these alarming roars which go up from the Fourth Estate every time anything which, by the most remote and strained construction, could be said to hinder the freedom of the press is suggested. The *Morning Oregonian* is a little less nervous about the situation. It stated editorially:

> There is some distinction, however, between regulation of means of communication between individuals and regulation of the broadcasting of radio entertainment. The radio commission licenses broadcasting and amateur radio. It is definitely denied the right of censorship by the statute creating the commission. To throw broadcasting into the jurisdiction of a commission created to regulate unrelated communications is somewhat inconsistent but not in itself suspicious of concealed purpose.
>
> But the newspapers, which are dependent for their existence upon untrammeled channels of communication, have had reason of late to be jumpy over the attitude of the administration toward them. They saw in the NRA newspaper code, as first drawn, provisions susceptible of evolution into censorship of the press.

THE *Boston* (Mass.) *Transcript* uses a pertinent reference in its editorial warning about muzzling the press or radio. The liberal and progressive press which shudders at the thought of being reduced to the status of Comrade Stalin's *Izvestia Pravda* or the "coördinated" publications of Herr Hitler might pause in their zealous advocacy of government ownership of "all communication facilities" to consider the words of the *Transcript:*

> What is implied of the future may become a matter of more acute concern. England tried the experiment of merging her cable and land lines, and deeply regretted it. European nations generally have maintained a military grip upon all their communication lines, but this for reasons which never have been regarded as essential in this country. . . .
>
> The public would welcome a supervisory system that would serve as a protection to them in the matter of rates and securities, if that be found necessary, but it is not ready, and it may never be, for the government directly to take over the privately owned lines of communication or to set up a system that would virtually amount to the same thing. The present move is initiated primarily to bring about system and enable a clearer view of the problems ahead. Reasonable government regulation of the companies will be welcomed, and, in large measure, it exists now. Moreover, with lines of communication already established, the interrelation of the new force, radio, of itself brings a series of new questions of considerable perplexity.

YET, there is much to be said for censorship intelligently exercised, although true disciples of Voltaire may deny that there can be any such animal. Consider the other extreme. Consider the statement accredited by the *Wall*

Street Journal of December 28, 1933, to Representative George Huddleston (D.), of Alabama:

> Time on the air should be available to anyone who applies for it regardless of subject matter.

Heaven help us if the Federal Radio Commission or its successor, or any other responsible authority, ever let such a policy be literally carried out. We wouldn't have to fear so much filth, slander, incitement to riot, or other offensive broadcasts which the local police force would soon put a stop to. On the contrary, it would be a more grievous offense than this which would be given full license to assail our ears —an offense beyond the reach of any policeman's blackjack—the traditional sin of the entertainment profession—sheer dullness.

Imagine what would happen if anybody with the price to pay for broadcasting time had the legal right to clutter up the air waves with his pet theories. Entertainment would no longer be the primary *motif* of radio broadcasting. Education—taken straight without any chaser—would assume commanding position. Broadcasting managers themselves would no longer have any discretion as to programs. We would have to resign ourselves to interminable lectures on prohibition, antivivisection, ethical culture, social planning, etc., etc., *ad eternitatem, ad infinitum, ad nauseam.*

UNFORTUNATELY there is no legislative direction, no administrative guide, no rigid regulation, by which we can assure radio entertainment value. The delightful fruits of the Muses, the Butterflies of Wit, the rich and thrilling colors of true artistry are too elusive to be captured in the test tubes of formula. It requires, first of all, enlightened managerial discretion, and after that sensitive regulatory supervision.

That is why the radio commission encourages broadcasting managements to make their programs more entertaining. That is why the commission has repeatedly "refused to renew" broadcasting licenses for the concealed reasons that the broadcasters are boring the public. The commission knows who the offenders are. Repeatedly it has made public the gist of public complaints against tiresome broadcasts. There is no pleasing every one, of course; but when nearly every one agrees that a broadcasting station is just using up air waves that no sober or sane citizen intentionally tunes in on, then censorship or no censorship, three cheers for the radio commission or any one else who fires it off the air. There are just so many wave lengths available in the present state of the broadcasting art and the public has a right to insist that monstrosities do not block the channels or take up air space. This isn't utility regulation; it's *traffic* regulation.

SO much for the censorship side of the argument. What about state's rights? Assuming that the Federal government is skilful enough to steer a safe course between the Scylla of popular censorship and the Charybdis of the Bill of Rights, what is to prevent the states from gumming up the whole works? Mr. J. Warren Wright, member of the District of Columbia bar, considered this problem in the course of a scholarly paper recently published in the *Proceedings of The Institute of Radio Engineers.* Mr. Wright stated in part:

> State regulation of broadcasting under the police power will likely prove troublesome as such regulations will doubtless tend toward prohibiting certain forms of advertising in addition to the usual regulations governing manufacturing. Yet if the billboard or manufacturing analogies are applied to radio and the limited service areas of modern broadcasting supports the former, a state could doubtless pass certain laws, valid under its police powers, and proceed against station and operators in the event of violations. Similar situations arose prior to the passage of the Eighteenth Amendment in connection with the manufacture of liquor in dry states and the Supreme Court in Mugler *v.* Kansas (123 U. S. 623) held that the state of Kansas having authority to prohibit the manufac-

ture and sale of intoxicating liquor had the power to declare any place maintained for such purpose a public nuisance and to proceed in abatement against the property as well as punish the offenders.

Of course a state could not prevent undesired transmission, originating in other states, from entering its borders. The state could and probably would in the hypothetical case proceed against anyone within its jurisdiction who "tuned in" on an obnoxious program and thereby created a nuisance. State courts have already taken the stand that the manner of operating a radio receiver determines whether it is a nuisance or not.

The constitutional right of free speech would probably not invalidate a proper state statute because of the right of every state to pass laws regulating safety, health, morals, and public welfare under the guise of police powers; and practice has shown that such laws are generally sustained by the courts.

IN other words, as long as the states stay on their own side of the police power fence, local statutory restrictions on broadcasters will be upheld. This gives the states a pretty broad field when one considers that a state may make tobacco smoking a penal offense, yet it has its limitations and as long as the broadcasting stations are well distributed geographically, citizens ought to find plenty of entertainment on the air that is free from inhibitions imposed by local legislators. As for being locked up for "listening" to an unlawful program, there does not seem to be an immediate need for alarm.

—F. X. W.

COMMENT AT THE CAPITAL. By David Lawrence. *Atlanta Constitution.* February 7, 1934.

DANGEROUS TO LET EVEN THE BAR CENSORSHIP MECHANISM BE SET UP. Editorial. *San Francisco Chronicle.* March 1, 1934.

THE FREE PRESS ON GUARD. Editorial. *Morning Oregonian* (*Portland, Ore.*) March 1, 1934.

RADIO AND REGULATION. Editorial. *Boston* (Mass.) *Transcript.* February 27, 1934.

SOME ASPECTS OF RADIO LAW. By J. Warren Wright. *Proceedings of the Institute of Radio Engineers.* November, 1933.

Other Articles Worth Reading

BUSINESS AND GOVERNMENT IN THE TENNESSEE VALLEY. By David E. Lilienthal, Director and General Counsel, Tennessee Valley Authority. Paper read before American Academy of Political and Social Science at Philadelphia, January 5, 1934.

COMMISSION REGULATION OF THE ISSUANCE AND THE ACCOUNTING TREATMENT OF SECURITY ISSUES FOR WATER WORKS PURPOSES. By David E. Lilienthal. *Journal of the American Water Works Association.* December, 1933.

ECONOMIC CONDITIONS, NOT PUBLIC REGULATION, GOVERN FUTURE OF THE UTILITIES. By William Wren Hay. *The Annalist.* January 19, 1934.

PROBLEMS OF THE UTILITIES YARDSTICK. By George Otis Smith. *Nation's Business.* January, 1934.

REGULATION OF TRANSPORTATION—A BUSINESS NECESSITY. By Carl R. Gray. *Industrial News Review.* December, 1933.

SCUTTLING TEN MILLION INVESTORS. Part IV. *The Financial World.* January 17, 1934.

SECURITIES OF PUBLIC UTILITIES—THEIR FUTURE PROSPECTS. *Modern Finance.* January 31, 1934.

STATE REGULATION OF WATER RATES FOR MUNICIPAL WATER PLANTS. By A. Bliss McCrum. *Journal of the American Water Works Association.* December, 1933.

TAX EXEMPTIONS TO MUNICIPAL UTILITIES. By Charles J. Tobin. *Journal of the American Water Works Association.* December, 1933.

TVA EFFECTS A DEAL WITH SOUTHERN UTILITIES. *Electrical World.* January 20, 1934.

WHAT PRICE THE ST. LAWRENCE SEAWAY? The Economies Involved in This Proposed Tremendous Project. By Edgar A. Van Deusen and A. J. P. Wilson. *Barron's.* January 15, 1934.

WHEN THE RATEPAYER BECOMES A TAXPAYER. By Herman H. Trachsel, Associate Professor of Government, University of South Dakota. *Industrial News Review.* January, 1934.

The March of Events

St. Lawrence Treaty Beaten; Fight Not Ended

IN spite of the defeat of the St. Lawrence waterway treaty in the Senate, March 14th, by a vote of 46 to 42, its proponents declared the fight would be carried to the country, and that it would be presented to the Senate at the next session. Ratification of the treaty requires a two-thirds vote.

President Roosevelt said he would send the treaty back for further consideration by the Senate at a later date. The President believes the waterway will be built in any event, and he fears that, without an agreement between the two countries, it will be entirely in Canadian control.

Senator Key Pittman, (D.) of Nevada, Chairman of the Foreign Relations Committee, who led in the fight to have the treaty ratified, predicts ratification at the next session. Senator Robert M. LaFollette, Jr., insurgent Republican of Wisconsin, declared that this was "only the first round" and that a treaty for the seaway would ultimately be ratified.

U. S. Takes Over Grand Coulee Project

UNCLE Sam has taken another stride into the power business with the announcement by Secretary of the Interior Ickes that the Federal government will construct and operate the huge Grand Coulee dam and power project on the Columbia river.

Decision to operate the "Muscle Shoals of the Northwest" as a Federal establishment places government power production in a third important geographical division of the nation. The government will take over the project from the state of Washington, which originally planned the development as a Public Works Administration project.

The Grand Coulee development is a $62,000,000 project. The project was approved by the PWA in July, and $63,000,000 was allotted for the work.

Secretary Ickes has explained, however, that because the project ran counter to provisions of the state of Washington's Constitution, it had been decided to drop state participation and take over the development as a Federal project. It will be handled by the Bureau of Reclamation of the Interior Department. A sum of $15,000,000 was made available to the Reclamation Bureau to finance construction of working quarters and a bridge and other preliminary work, which is to start immediately.

Eastman Asks I. C. C. Control of Bus Lines

REGULATION by the Interstate Commerce Commission of all forms of transportation is recommended in a report submitted to the President and Congress on March 10th by Joseph B. Eastman, Federal Coördinator of Transportation.

Mr. Eastman described immediate Federal regulation of motor and water carriers as imperative to avert a "threatening chaos" in transportation, and the pressing importance of this undertaking was emphasized in the letter of William E. Lee, chairman of the Interstate Commerce Commission, transmitting Mr. Eastman's recommendations.

The report also recommends a number of amendments to the Interstate Commerce Act, chief among them being the restoration of the fourth section to the form which it had prior to 1920, thereby permitting the commission to authorize the charging of lower rates for a longer haul than for a shorter haul over the same route in the same direction. Chairman Lee and Commissioner McManamy objected to this change; otherwise the commissioners were unanimous in endorsing all of Mr. Eastman's recommendations.

Mr. Eastman's report is the second of a series which he is preparing in accordance with the mandate of transportation act of 1933. The first report, submitted about six weeks ago, dealt with the problem of railroad consolidation.

Submarine Wire Brings Power

A CABLE under the Rio Grande river will bring electricity from San Benito, Tex., to Camargo, state of Tamaulipas, Mexico. By the terms of the concession granted the Macedonian Society, as it is called, the concessionaires agree, in Mexico, to conform to the national power code. The concession is good for fifty years. At the end of that time the rights involved shall pass to the Federal government of Mexico.

The concession cannot be transferred to a

foreign government nor can a foreign state become a shareholder.

Naval Men Break Strike

NAVAL electrical engineers were rushed to Barcelona on March 16th from Cartagena to operate light and power plants. It was officially denied by the Catalan regional government that martial law had been proclaimed there as a result of the gas and electrical workers' strike.

Interior Minister Rafael Salazar Alonso, of Spain, said Catalonia could obtain as many army and navy electricians as might be needed under the state of alarm existing throughout Spain.

Only 7,000 of the 28,000 gas and electrical workers who were ordered out by Socialist and anarchist unions in Barcelona failed to return to their jobs. Most of the men decided to resume work while negotiations with their employers continued in the office of the Labor Councilor.

Two destroyers brought the naval electricians to Barcelona from the naval base at Cartagena and more were promised if they were needed to take the places of strikers in plants there or in the great power works on the Ebro river, which supply electrical current to all Catalonia and Aragon, including Saragossa.

Arizona

Troops Called to Protect State's Rights

RESORTING to drastic action to protect the state's water and power rights, Governor B. B. Moeur on March 3rd ordered a squad of national guardsmen to patrol the Colorado river banks near the Parker dam site of the metropolitan water district.

Lines will be set up in northern Yuma county along the river banks when four or five men and an officer will start patrol duty, the governor said. This procedure in Arizona is similar to Governor Murray's action in the state of Oklahoma some months ago when the rights of this state were threatened.

Governor Moeur will accompany the guardsmen personally to the site which is proposed to be a diversion dam to take water out of the Colorado for use throughout southern California.

"I am merely interested in protecting the rights of this state from encroachment," the governor said. "I will welcome the matter being taken to the Reclamation Department in Washington. I assure you there will be no construction work done on the Arizona side of the river until an agreement over the future power and water problems have been settled between California and Arizona."

"I am not accusing the state of California of encroaching upon our rights," he said, "but the work is being done by the metropolitan water district of Los Angeles. I am going to send a squad of Arizona national guardsmen to protect this state's interest. I am not going to have any encroachment on our rights."

California

Forty Cities to Combine in Utilities Project

A NEW version of municipal ownership of utilities in which 40 cities and towns will eventually become joint proprietors of a $50,000,000 company is contemplated by Water Properties Company, Ltd., of San Francisco.

The company agrees to purchase the local distribution systems and present them to the cities which have signed contracts for the purchase of water at specified amounts for thirty years. At the expiration of the contract period the cities become owners of the physical properties of the company and will operate it as an immense utility district.

San Jose, California, has signed a contract and the city councils of Stockton and several other Northern California cities have the project under consideration.

City Utility Tax Sought

THE first step toward requiring the Los Angeles department of water and power to pay franchises and city taxes on the same basis as privately owned utilities was taken in the Los Angeles city council on March 15th when a resolution was introduced on the subject.

The resolution, asking Mayor Shaw to call a conference on the matter between the water and power commission and a committee of councilmen to be named, was referred to the finance committee for a report.

District of Columbia

Keech Appointed Commissioner

RICHMOND B. KEECH on March 19th was appointed by President Roosevelt to be a member of the public utilities commission. Commissioner Keech, whose long term as people's counsel recently expired, expressed surprise and gratification at the appointment. He said he had not heard from the White House, directly or indirectly, since his name was first mentioned. Commissioner Keech has been employed in the municipal service nine years; five as assistant corporation counsel and four as people's counsel.

Georgia

Boosts Utilities Taxes

TELEPHONE companies and railroads which so far successfully have fought in court efforts of Governor Eugene Talmadge to reduce their rates in Georgia were handed notices on March 16th that their tax assessments for this year had been boosted $145,551,938, bringing them a consequent increase of nearly $5,000,000 in taxes, according to the Baltimore *Sun*.

Those utilities which have accepted the rate reductions or failed to obtain injunctions were not included. They are the Georgia Power Company, the Savannah Electric and Power Company, and the Southern Bell Telephone and Telegraph Company. The latter tried to obtain a Federal injunction but was unsuccessful, and the reduced rates ordered by the public service commission are now operating.

The boost in the tax assessments slapped on by the state for ten telephone companies and thirteen railroads run from about eight times the return submitted down to about double.

Plans for tax increases were announced by Governor Talmadge at the time the concerns obtained their court orders. He said he was for "low rates and low taxes, but if we can't have both we won't have either."

Illinois

Rockford Gets Rate Cut

A REDUCTION of approximately 18 per cent in Rockford home electric bills was announced on March 12th by the Central Illinois Electric and Gas Company. The reduction, amounting to $150,549, is the result of an agreement reached by an arbitration committee appointed by Mayor C. Henry Bloom and Donald C. McClure, president of the utility company, to settle a dispute between the city and the electric company.

Indiana

Will Vote on Light Plant

DESPITE an injunction petition filed in Delaware circuit court, the Muncie city council has decided to hold an election April 24th to vote on whether the city should buy the electric plant.

Two members of the council, one a Republican and one a Democrat, were appointed to serve on the election commission.

The suit to enjoin the council from authorizing the election was filed in behalf of the Indiana General Service Company, now operating the electric plant. It attacked the constitutionality of the 1933 state law under which the election is authorized.

Iowa

Acts on Utility Bills

A BILL rewriting the state's pipe-line law and giving the state railroad commission added powers in the regulation of such companies has been passed by the Iowa legislature.

A bill allowing municipalities to own and

operate telephone systems was passed by the house but died in the senate in the closing days of the session.

An effort to allow municipalities to regulate telephone rates was defeated in the house. Both houses, however, did pass a bill requiring telephone companies to furnish equal facilities and services to each other, it is reported.

A bill to create a state hydroelectric commission empowered to construct electric light and power plants and to distribute their output over the state died in the house steering committee.

Kansas

Officials Seek Lower Gas Rate; Reduction Proposed

OFFICIALS of forty Kansas towns met in Halstead on March 13th for the purpose of organizing in support of a program of lower gas rates.

An organization was formed and a board of strategy was appointed to direct a campaign for rate reduction and development of Kansas gas resources.

Adopted resolutions stated in part: "Whereas, Kansas has immense gas reserves within its own borders, sufficient in quantity to furnish all users at a reasonable rate, and whereas, we believe in the development of Kansas natural resources for the benefit of the state, . . . we recommend that Kansas communities study well the plans of furnishing gas service to their own people, and we insist on an immediate and substantial reduction in charges for gas furnished in Kansas communities."

Among the towns represented were Towanda, Peabody, Halstead, Wichita, Winfield, McPherson, Chanute, Hutchinson, Burrton, Emporia, El Dorado, Newton, Hillsboro, Toronto, Great Bend, Oxford, Pittsburgh, and Anthony.

The Western Distributing Company, a Cities Service Company subsidiary serving several towns in central Kansas, has proposed a gas rate reduction that would give Halstead the lowest consumer rates on file with the state corporation commission.

The company has filed a new rate schedule with the commission offering a monthly demand charge of $1 for the average consumer plus a rate of 10 cents a thousand cubic feet for all gas consumed.

The present city gate rate charge of the Western Distributing Company is 40 cents a thousand cubic feet.

In February Halstead voted $30,000 in bonds to build a municipal gas plant and has entered into a contract with another concern to purchase domestic gas at the city gate for 20 cents a thousand cubic feet, and industrial gas for 18 cents a thousand feet, according to a statement published in the Topeka *State Journal*.

Kentucky

Kentucky Commission Voted

WITH proponents of the measure forcing a vote and cutting off debate the senate on March 7th passed, without amendment, a house bill to create a public service commission of three appointive members to regulate all utilities in Kentucky, whether municipally or privately owned. The vote of 24 to 13 came after a series of amendments were rejected one after the other.

The bill was given a favorable report at noon by the senate rules committee. Its passage was one of the considerations reported to have been demanded by the minority group for supporting the administration, according to a dispatch in the *Courier Journal*.

Louisiana

Electric Rates Reduced in New Orleans

INAUGURATION of new schedules of electric service rates for residential and small commercial consumers, under which it was said an annual saving of $653,123 will be effected, was ordered by the New Orleans commission council on March 7th over the protest of representatives of New Orleans Public Service, Inc.

The new rates, under terms of the motions, would become effective with the issuance of electric power bills April 15th. The motions for inauguration of the revised rates were introduced by Utilities Commissioner Fred A. Earhart. The new schedules do not apply to large commercial consumers of electricity.

Under the new schedule, the rate for residential service would be as follows:

First 50 kilowatt hours, 7.5 cents per hour; next 50 kilowatt hours, 4 cents per hour; next 150 kilowatt hours, 2.5 cents per hour; all additional kilowatt hours, 1.5 cents per hour.

The rates under the old schedule, for both residential and commercial service, were 9.1 cents per kilowatt hour for the first 20 hours, 7.8 cents per kilowatt hour for the next 30 hours, 6.5 cents per hour for the next 150 hours, and 5.2 cents per kilowatt hour for all additional.

Immediately after approval of the new rate schedule, the commission council issued an order directing the Louisiana Light & Power Company to show cause before the council why corresponding rates for electric service to consumers should not be put into effect in Algiers.

Massachusetts

Gas Company Files New Rate Schedule

ELIMINATION of service charges and new rates for all classes of service throughout the entire territory have been announced by the Worcester Gas Light Company in schedules filed with the public utilities commission in Boston. Service charges have ranged from 35 cents to $1.85 a month, depending upon the location and size of the meter. Many persons have ordered removal of gas meters for periods ranging from two to five months of the year. There is considerable agitation in the legislature to abolish service charges by law.

Rate Cut Proposal Rejected

A PETITION seeking reduction of rates prevailing within the service scope of the Springfield Gas Light Company has been rejected by the Massachusetts Department of Public Utilities. The petition was filed with the department by Dwight R. Winter, a former mayor of Springfield, who was defeated for reëlection at the recent municipal elections in Springfield, during the period Mr. Winter was holding office as mayor. Mr. Winter claimed the company is making sufficient profit to turn back a share to the consumers in a rate cut of at least 10 per cent. It was found that the earnings and profits of the company were not excessive.

Michigan

Natural Gas Fight Brewing

A CLASH of expert opinion on the extent of Michigan's natural gas reserves is scheduled to take place before the commission within a few weeks, James B. Balch, recently appointed chairman of the commission, has announced. The occasion will be a hearing on an application for permission to furnish natural gas to the cities of Detroit, Flint, and Pontiac.

State geologists, in a preliminary report to the commission, say there is not sufficient gas available in the Michigan field to supply even Grand Rapids, much less the city of Detroit, which is ten times as large.

Minnesota

St. Paul Defeats City Power Plant

A PROPOSAL to issue $10,300,000 in bonds for the construction of a municipal electric plant and distribution facilities in St. Paul was defeated by a vote of 48,526 to 32,226. The total of more than 80,000 was the largest vote ever recorded at a primary election in that city. Sponsors of the bond issue wanted a city plant to compete with the Northern States Power Company, a subsidiary of the Standard Gas & Electric Company, now ren-

dering the entire electric and gas utility services.

The question came to vote as a direct result of failure of the city and company officials to agree on a new franchise, to replace the one which expired last year. The power question, however, is likely to become an issue again when on April 24th voters may be asked to approve a franchise acceptable to the company.

Although the bond issue lost, its chief sponsor, Mayor William Mahoney, won renomination. He has indicated that he will oppose approval of the proposed Northern States franchise in April, while support to the franchise will be given at that time by Mark D. Gehan and his party. Gehan was second in the mayoralty race and will lead the opposition to Mahoney in the final voting on April 24th.

Mississippi

Phone Rate Study Asked

RESOLUTIONS were adopted by the directors of the Hattiesburg Chamber of Commerce instructing the legislative committee of the organization to endeavor to have the investigation of telephone rates in the state of Mississippi reopened by the railroad commission.

The commission now is enjoined from inquiring into telephone rate schedules. The injunction was granted some time ago by a special tribunal of three Federal judges to whom the Southern Bell Telephone Company appealed against a revision of tariffs.

C. M. Morgan, chairman of the state railroad commission, issued a statement declaring it would be necessary to show the telephone company is earning more than 6 per cent on its investment to set aside the injunction and open the way for an inquiry. The chamber of commerce requested the legislature to sanction an appropriation for an effort to have the injunction set aside.

Missouri

Franchise Test Proposed

INSTITUTION of *quo warranto* proceedings in the supreme court to test the validity of the Laclede Gas Light Company's franchise was directed in a resolution approved on March 14th by a special aldermanic committee investigating the feasibility of supplying the city of St. Louis with natural gas.

The resolution, which requests the city counselor to take the necessary steps to begin the proceedings, will be submitted to the entire board of aldermen for adoption or rejection.

A *quo warranto* action of this kind, the aldermen have been advised by City Counselor Hay, must be started either by the circuit attorney or the state attorney general.

The Laclede Gas Light Company has maintained it has a perpetual franchise, but City Counselor Hay, in an opinion given the aldermanic committee, maintained it had neither a perpetual nor an exclusive franchise. He held its franchise expired in 1917.

Nebraska

Sues for Triple Damages

CHARGING that the Nebraska Power Company of Omaha is a monopoly, the city of Fremont has filed suit in district court for $105,000 damages—three times the loss allegedly suffered by the Fremont municipal light plant when the Omaha company took over the North Bend electric line March 14, 1930. The treble damages are sought under the monopoly act.

The suit is the city's second against the power company. One for $75,000 was filed four years ago on the allegations that the power company had tried to restrain trade and commerce by offering excessive amounts and purchasing lines served by the Fremont plant in Arlington, Cedar Bluffs, and Hooper.

The first case has not been tried, having just recently been returned to the district court on motion of the city after being removed to the Federal court previously. The petition in the last case charges the Nebraska Power Company offered $100,000 for the North Bend system, and that the system has a value of not more than $30,000.

New York

Rate Cut Not Justified

WESTCHESTER Lighting Company's reports made to the New York Public Service Commission do not justify a decrease at present in its rates, officials of Scarsdale were informed in reply to their petition for a reduction. The commission reported that it had no funds to start an investigation of the matter, according to *Electrical World*.

North Dakota

Earnings Ordered Impounded

AN order requiring the Montana-Dakota Power Company to set aside 25 per cent of its earnings from the electric service in fourteen northwestern North Dakota towns pending an investigation and fixing of electric rates has been issued by the state railroad commission. The order affects company earnings from electric service in the towns of Tioga, Spring Brook, Epping, McGregor, Hanks, Grenora, Wild Rose, Corinth, Zahl, Appam, Temple, Alamo, Ray, and Watford City. A similar order affecting the towns of Portal, Flaxton, Bowbells, Stanley, and Powers Lake was issued November 1, 1933.

Electric consumers in the fourteen towns filed petitions with the commission for revaluation of the company's property to determine rates to be charged for the electric service.

Unable to reach an agreement with the power company which would bring about a reduction of 15 per cent or more in the rates, the commission, acting under a law passed by the 1933 legislature, ordered a 25 per cent reduction, provided, however, the company may charge the full present rate if it keeps 25 per cent of the collections impounded pending final determination of the rates.

Ohio

Gas Rate Ordinance Predicted

A NEW 48-cent gas rate ordinance will be passed by the Columbus city council within the next few months, to become effective November 1st, Council President Frank C. Karns has predicted, following the refusal of the U. S. Supreme Court to hear the appeal of the Columbus Gas & Fuel Company.

President Karns announced that the council soon will begin writing a new ordinance, based upon the findings of the courts. The ordinance probably will authorize a rate of 48 cents, and will extend over the 5-year period from November 1, 1934, to November 1, 1939.

Meanwhile Attorney General John W. Bricker declared that the refusal of the U. S. Supreme Court to hear the appeal of the gas company from the 48-cent rate set by the Ohio Supreme Court automatically forces the state utilities commission to order the 48-cent rate into effect at once.

Word received at Columbus city hall from Washington indicates that a new fight against the ordinance is planned by the gas company.

Court Gets Bell Rate Appeal

AN appeal predicated on a charge of confiscation has been filed in the state supreme court by the Ohio Bell Telephone Company from a state utilities commission order directing a reduction of rates and a refund of $13,000,000 collected under bond during the statewide rate investigation.

Application for a stay of execution of the commission order accompanied the appeal.

In one petition the company attacked the commission's action in fixing the value of its property, the rate of return, and directing reduction of rates and refunds to subscribers from June, 1925, to and including the year 1932.

The second action was confined to an appeal from the valuation for rate-making purposes fixed by the commission.

Oklahoma

Municipal Plant Approved

VOTERS in Cushing have approved by 490 to 183 a $280,000 municipal light and power bond issue to take advantage of a Federal public works loan and grant for $350,000 which already has been approved in Washington on the stipulation that new bonds be voted. At present the city is served by the Interstate Power Company, which recently filed with the corporation commission a new rate schedule showing substantial reductions in power rates from those formerly in effect.

Oregon

Will Vote on Power Bill

THE Grange power bill, in litigation since its passage by the regular session of the Oregon legislature in 1933, will go on the ballot of the 1934 general election in November under a referendum sponsored by the Security Owners Association of that state, according to a recent court ruling. The bill provides for a power commission which will have authority to build plants and lines for the sale of electric power.

Rhode Island

Telephone Rates Questioned

THE reasonableness of telephone rates in Rhode Island during the last five years was questioned by Senator William G. Troy (D.), of Providence, in a resolution presented on March 5th in the senate. He asked that the commission report to the general assembly on that matter and on "the reason for the failure of said telephone rates to align themselves with other costs and charges."

Charging that present rates are as high as they were in 1929, Senator Troy asked for immediate consideration of his resolution. This was objected to and the resolution went to the judiciary committee.

Tennessee

Rates under Fire

THE state railroad and public utilities commission has ordered reductions in rates charged by the Tennessee Eastern Electric Company and the East Tennessee Light and Power Company, affecting 12,000 consumers in Bristol, Elizabethton, Johnson City, Erwin, Jonesboro, and other East Tennessee towns. The rates will effect an immediate reduction of $34,000 annually to domestic consumers, with a possible ultimate reduction aggregating $80,000 annually under a promotional rate available to users who increase consumption over corresponding monthly periods of the previous year.

Hearing on the application of Tennessee's four major cities for a 20 per cent reduction in municipal telephone rates will be held May 8th by the commission. This definite date has been announced following a conference between Walter Chandler, Memphis city attorney, and members of the commission. City attorneys for Nashville, Chattanooga, Knoxville, and Memphis have filed the application for the rate reduction.

Cities Seek TVA Power

LEGISLATION enabling Memphis and other Tennessee cities to buy or build their own electric distribution systems and obtain cheap TVA power has been advocated by Watkins Overton, mayor of Memphis. The mayor indicated that the city commission will ask Governor Hill McAlister to call an extraordinary session of the general assembly for passage of an enabling act, if a survey shows that power is available.

Cities, under Mayor Overton's plan, would be allowed to borrow money from the Federal government, or other sources, for erection of a local power distribution system.

The city commission of Chattanooga has passed a resolution asking Governor McAlister to call a special session to enable Chattanooga to obtain TVA power.

Virginia

May Reopen Danville Project

UPON request of a group of power expansion advocates, the Danville city council has agreed to take further steps looking to the resubmission of the question of borrowing $3,000,000 from the PWA for the construction of a municipal hydroelectric plant in Patrick county. The proposal was recently defeated in a referendum by a margin of 184 votes.

The proponents would bring about consideration of the development under a different contract leaning to a plan similar to that offered under the RFC before it terminated its activity. A group of fifty advocates of reopening the question have appeared before the council. After hearing the petitioners the council instructed the city attorney to reopen negotiations with the PWA with a view to sounding out officials.

Another referendum on the original contract between the city and the government on the project could not be held within a year but a new contract would constitute a new proposition, it is contended.

West Virginia

Utility Survey Planned

A COMPLETE survey of public utility valuations and rate bases, to begin at an early date, is planned by the public service commission. The survey is to be financed by an additional $180,000 appropriated by the legislature in a bill finally passed by the house of delegates recently. The revenue for the appropriation is to be collected from the public utilities in the form of a special license fee.

Wisconsin

Ask Municipal Plant Vote

PROTESTING failure to reduce their electric light rates along with the 25 per cent reduction in residential rates several months ago, business men of Mt. Horeb voted unanimously in a mass meeting to request a referendum vote on purchase of the Commonwealth Electric Light and Power Company.

The request will be forwarded to the village board of trustees, and petitions asking the referendum will be circulated at once, according to the plans.

The referendum will be held at the spring election April 3rd, provided the required number of signatures are secured.

Investigation Ordered

INVESTIGATION of application by the city of Milwaukee for permission to construct a $14,800,000 electric plant has been ordered by the state public service commission. No date is set. Mayor Hoan and City Attorney Max Raskin contend that the city is already operating as an electric utility, but serving only the city government, and that permission of the commission is needed only for extension of its plant to general service. This contention is based upon the fact that the city owns a power plant as part of its sewerage system. Cost of the investigation will be assessed against the city.

Wyoming

Gas Rate Probe Asked

AN investigation of Cheyenne gas rates by the state public service commission has been requested by Governor Leslie A. Miller.

In a letter to C. H. McWhinnie, chairman of the commission, the governor declared the Cheyenne people are "entitled to a very noticeable reduction in the price they are paying for gas."

He added his belief that a new rate schedule submitted to the public service commission by the Cheyenne Light, Fuel & Power Company afforded "entirely inadequate relief."

Declaring he had studied the new rate schedule submitted by the company, the governor said the new sliding scale rate invariably increases the cost to small gas users by about 8 per cent. "In my opinion these are the people most in need of an appreciable decrease in rates."

The Latest Utility Rulings

Supreme Court Distinguishes between Public Utility and Business Affected with Public Interest

For a number of years students of regulatory legal literature have observed a trend of decisions purporting to uphold state regulation of businesses which are not usually considered public utilities, and are not regulated as such in all their operating aspects, such as rates, service, securities, certificates, transfers, accounting, and so forth. For example, the Supreme Court has upheld state laws regulating the rates of insurance companies and the state laws limiting banking activities. This trend led some to believe that there was a distinction between a business affected with public interest to the extent of warranting state regulation of only certain aspects of its operations and a regular public utility which is regulated as to all of the aspects above mentioned.

This distinction became the official view of the United States Supreme Court in a recent decision upholding the constitutional validity of a New York statute creating a milk control board and empowering it to fix minimum and maximum prices for the dairy industry for the sale of milk in that state. The decision was widely heralded as a good omen that constitutional blessings will ultimately be given by the highest court to the more extensive new deal legislation, such as the National Industrial Recovery Act and the Agricultural Adjustment Act.

The New York milk case arose on an appeal by a Rochester grocer from a conviction for alleged violation of a price-fixing regulation for the sale of milk by the state milk control board. It appeared that the grocer had attempted to evade the enforcement of the regulation by giving away a loaf of bread with the sale of milk, while ostensibly charging the legal prescribed price for the latter. On appeal, the New York Court of Appeals sustained the constitutional validity of the statute as an emergency measure (see People *v.* Nebbia, P.U.R.1933D, 225). The United States Supreme Court, in a majority opinion by Mr. Justice Roberts, did not stress the emergency character of the legislation, although one may probably infer that that view was taken for granted as a result of the construction placed upon the law by the highest court of the state. The rulings of the majority opinion of the United States Supreme Court can briefly be enumerated as follows:

(1) An order of a state milk control board was held not to deny to a retail milk dealer equal protection of the law guaranteed by the Constitution because it required him to purchase his supply at a wholesale price and to sell it at a retail price different from the board's requirement of prices as to wholesale dealers.

(2) The state in the exercise of its constitutional power to protect the general welfare may enact a statute to create a state board for the regulation of minimum and maximum retail prices of milk, since milk is an essential item of diet and a paramount industry of the state, curtailment or destruction of which would result in grave economic loss and jeopardize public health.

(3) Although the use of property and the making of contracts are constitutionally protected from government interference, such rights are not absolute and cannot be exercised under conditions adverse to public interest but are subject to the constitutional right of public regulation for the general welfare.

(4) A state law creating a board to fix the price of milk is not void because the dairy industry is not a public utility, since such industry is nevertheless subject to regulation as a business affected with public interest.

(5) The private character of a business does not necessarily remove it from the realm of public regulation of charges and prices, since the phrase "affected with public interest" can mean no more than that an industry for adequate reason is subject to control for the public good.

(6) A state is free under the Constitution to adopt whatever economic policy may reasonably promote public welfare and to enforce that policy by legislation adapted to its purpose without violating the requirement of due process, and the courts are without authority either to declare such a policy or to overrule it when it has been declared by state legislation, provided the laws are neither arbitrary nor discriminatory and have a reasonable relation to the legislative purpose.

(7) Where conditions in a private industry make unrestricted competition dangerous to the interest of the consuming public and producer alike, the state, to safeguard the industry and the supply of the commodity it produces, may enact appropriate price-fixing legislation to correct the economic maladjustment.

Mr. Justice McReynolds, in a dissenting opinion, concurred in by Justices Van Devanter, Sutherland, and Butler, attacked the theory that legislative action, which ordinarily would be ineffective because of its conflict with the Constitution, may become valid in order to meet emergency conditions. *Leo Nebbia v. People of State of New York.* (*No. 531.*)

Commission Lacks Power to Impose Unauthorized Condition on Consent to Utility Transfer

THE New York Court of Appeals has denied the authority of the public service commission of that state to grant its approval to transfer of utility properties and at the same time impose a condition that part of the purchase price (which the commission deemed excessive) be charged to corporate surplus. The case arose upon the application of the Iroquois Gas Corporation to purchase a natural gas plant for the agreed sum of $130,000. The commission found that this price was excessive but nevertheless approved of the same as being in the interest of the public, upon condition that a portion of the purchase price—$40,000—should be charged to corporate surplus by the purchasing corporation. The Iroquois Gas Corporation objected to the imposition of such a condition but the state public service commission opinion was affirmed by a lower court.

In the more recent opinion by the court of appeals by Judge Lehman, the court made a distinction between conditions which the commission might have power to impose through independent act and those which the commission had no statutory authority to impose in any event. The court conceded that the statutory authority of the commission to grant consent to the transfer of utility properties included the power to withhold consent and that therefore the commission may make its consent conditional upon changes in the terms of the contract of purchase that in effect would be a denial of consent to the transfer as proposed, coupled with unconditional approval of a different transfer, provided the condition imposed does not require the parties to do anything which the commission would have no power to make them do independently.

The court pointed out that the commission had no statutory authority to require the utility to write off of its

book value the loss which it had not sustained or to give up a part of its constitutional right through the requirement that the utility charge part of the purchase price for its properties to corporate surplus. Therefore, the court ruled the commission has no power to impose as a condition to its approval of the transfer of utility property that the purchaser charge off that portion of the purchase price to corporate surplus which the commission regarded as in excess of a fair cost of the property involved.

The court was careful to point out that the commission, in the exercise of its power to protect the public interest, had the right to refuse the transfer of the property on grounds that the proposed cost was excessive. It was further conceded that the commission would have the power to continue to deny such approval until the cost was reduced sufficiently to meet requirements of public interest. In this case, however, the commission, instead of refusing to approve the excessive cost, had, on the other hand, expressly approved of it upon fulfillment of an accounting condition which it had no authority to impose.

The court declined to modify the commission's order approving the transfer by merely striking out the condition, observing that the commission would probably not have approved of the transfer without such condition. In such an event, the court felt that the proceeding should properly be remanded to the commission for a new determination. *People of State of New York ex rel. Iroquois Gas Corp. v. New York Public Service Commission.* (*No. 15.*)

Commission Stops Annoyance of Locomotive Whistling at Grade Crossings

It is the custom of natives of New York city to assure newcomers they will quickly grow used to the rumble of the elevated railways in the Big Town. Some enthusiastic Manhattanites even complain that they miss those dear old periodical earthquakes, when necessity compels them to spend the night out of earshot of the city's din. Whether it is because the first hundred years are the hardest, or because they are extraordinarily sensitive people, the good folks of Concord, Mass., have never been able to get used to the loud piercing screams of locomotive whistles at the various grade crossings through that community along the right of way of the Boston & Maine Railroad.

Complaints became so numerous that the town selectmen finally petitioned the Massachusetts Department of Public Utilities to do something about the matter. The department pointed out that the advent of the automobile had made it more necessary than ever for railroad locomotives to give substantial warnings before passing grade intersections with the highways. However, the department conceded that where the noise from locomotives interferes with the reasonable enjoyment of the homes in the vicinity of such intersections, and is beyond what is required for the protection of the traveling public, a good case is made out for corrective action by the department. The department remarked that residents in communities situated along the line of the railroad "cannot demand the quiet of a farm."

The evidence indicated that a total of 38 passenger trains and 18 freight trains passed over the town crossings every day, and since it was the practice of locomotive engineers to sound "signal 14L" before each crossing (which means two long blasts followed by two short blasts), the town of Concord as a result had to listen to no less than from 700 to 800 locomotive whistle blasts every day. The department felt that "the claim of annoyance has some

basis in fact." As a corrective measure, the department of public utilities ordered the locomotive engineers to desist from the practice of sounding four blasts before passing every intersection and felt that a single long blast would be sufficient to protect the traveling public. *Selectmen of Town of Concord v. Boston & Maine Railroad.* (*D. P. U. 4706.*)

Irregularities in Municipal Plant Accounting Corrected

DISCOVERY that all but $4,119 of $205,695 shown as funds "on hand" for the Stoughton, Wis., municipal utility plant had been used for general city purposes resulted in an order of the state commission directing the city to keep municipal plant funds separate from city funds. The commission also found that the city had not complied with a statute requiring it to establish an independent nonpartisan board or commission for the management and operation of the plant. The city was given sixty days to establish such a board.

The commission order was attached as a condition to its approval of an application by the city for authority to construct an addition to the existing power plant of the city. Application was made for a Federal loan to the Public Works Administration to aid in the project. Although the commission had some doubt as to the wisdom of the project on its economic merits, it approved the project with the conditions above mentioned upon finding that the city would not be greatly harmed in any event. The commission stated in this respect:

> If the city installs these engines, it is clear that a certain amount of duplicate generating facilities will be provided. Unless the Wisconsin Power and Light Company can find another outlet for the capacity devoted to standby service to Stoughton, this capacity would be duplicated by the new Diesel engines. A further point is that the city is close to its bonded debt limit. According to the information before us, the city can still issue approximately $92,000 in bonds as general city obligations. Apparently the city contemplates using $35,000, expected to be obtained from the Federal government as an outright grant, toward keeping the bond issue within the city's debt limit.
>
> The above facts indicate that although the proposition is of doubtful substantial benefit to the city, it will not do substantial harm to the city. Under these circumstances the commission is of the opinion that a certificate of authority should be issued under certain conditions which are hereinafter noted.

Officials of the Stoughton municipal utility at a recent conference with the commission contended that the earnings of municipal plants should be used to reduce taxes. Chairman Theodore Kronshage, Jr., of the commission said that such a practice would result in discrimination against small customers in favor of large landowners and industries. Excess earnings should go to rate reductions rather than tax reductions, Chairman Kronshage asserted. *Re City of Stoughton.* (*NCA–34.*)

Commission Power to Check Unwarranted Dividend Declarations

THE Ohio Supreme Court has sustained the jurisdiction of the commission of that state to order telephone companies to desist from declaring or distributing dividends to its stockholders, where no funds are available therefor from operating income and where the continuation of such payments would result in a deterioration of the properties of the company and the impairment of the service to the public. The decision was handed down in an appeal by certain telephone companies from orders of the commission which prohibited them from diverting funds already in the depreciation fund or